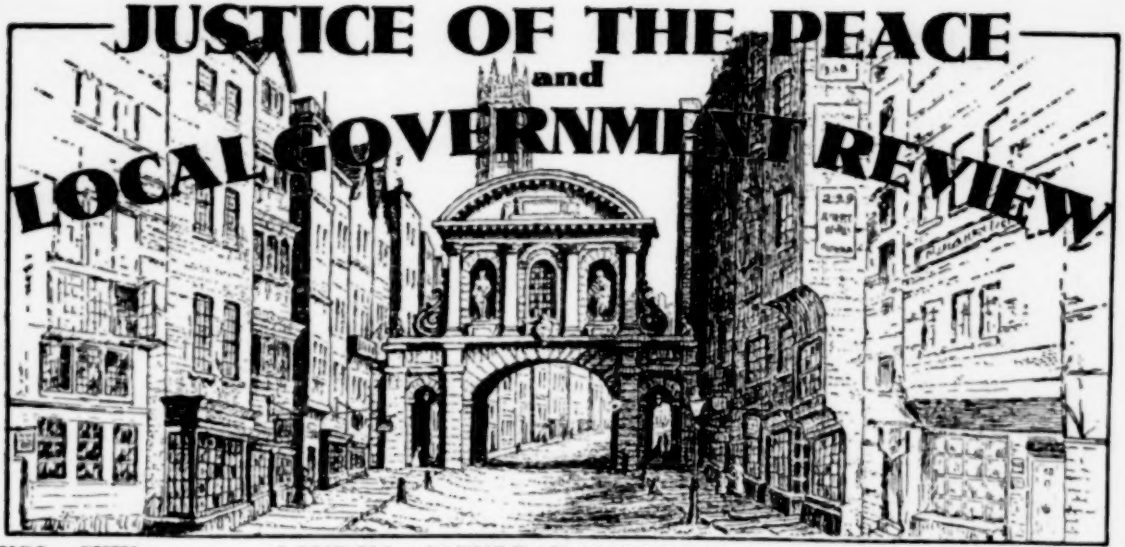
JUSTICE OF THE PEACE and LOCAL GOVERNMENT REVIEW



VOL. CXIV. LONDON: SATURDAY NOVEMBER 11, 1950. No. 45

CONTENTS

Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

BOROUGH OF BRENTFORD AND CHISWICK

Appointment of Assistant Solicitor

At a salary according to Grade VIII of the A.P.T. Division Scale of the National Scheme of Conditions of Service (*viz.*, £685 to £760 per annum, plus London Weighting according to age), commencing first year. Applicants must be experienced in advocacy and conveyancing, and knowledge of municipal law and practice will be an advantage.

The appointment will be subject to (*a*) provisions of the Local Government Superannuation Act, 1937, (*b*) National Scheme of Conditions of Service and (*c*) satisfactory passing of a medical examination.

Applicants, stating age, qualifications and experience, and giving names and addresses of two referees, should be addressed to the undersigned to be received not later than November 20, 1950.

Candidates must, when making application, disclose in writing whether they are related to any member or senior Officer of the Council, and canvassing directly or indirectly will disqualify.

W. F. J. CHURCH,
Town Clerk.

Town Hall,
Chiswick, W.4.

COUNTY OF NOTTINGHAM

Borough of Newark ; Petty Sessional Division of Newark ; Petty Sessional Division of Southwell

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above full-time appointment. Applicants must have a thorough knowledge of the work of a justices' Clerk's office, including the issuing of process, the keeping of accounts, the taking of depositions and be capable of acting as Clerk to the Court if required. The applicant must be an experienced typist and experience in shorthand would be an advantage. The salary will be on Grades III and IV of the A.P.T. Division of the National Joint Council Scale, namely £450 × £15 to £525 per annum and the commencing salary will be fixed within those Grades according to experience. The appointment will be subject to one month's notice on either side and will be also subject to the provisions of the Local Government Superannuation Act, 1937, the successful candidate being required to pass a medical examination.

Applications, stating age and experience, together with copies of two recent testimonials, must reach Mr. R. Neville Ross, Clerk to the Justices, Town Hall, Newark, not later than Saturday, November 18, 1950.

K. TWEEDALE MEABY,
Clerk of the Standing Joint Committee.

Shire Hall, Nottingham.

CARDIGANSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS are invited for the post of Assistant Solicitor at a salary in accordance with Grade A.P.T. VIII (£685×£25—£760 per annum).

The appointment is superannuable and subject to medical examination, and will be determinable by one month's notice on either side.

Candidates should have experience of conveyancing and advocacy. A knowledge of the Welsh language and of local government law and administration will be advantageous.

Applications, stating age, experience, and qualifications, accompanied by the names and addresses of two persons to whom reference may be made, should reach me not later than Wednesday, November 22, 1950.

J. E. R. CARSON,
Clerk to the County Council.

County Offices,
Aberystwyth,
Cards.

WEST RIDING OF YORKSHIRE COMBINED AREA PROBATON COMMITTEE

Appointment of Three Whole-Time Female Proation Officers
Appointment o One Whole-Time Male Pbation Officer

APPLICATION are invited for the above appointments.

The female ficers would be centred at Barnsley, Halifx and Pudsey and the male officer at Rotheam.

Applicants mst be not less than twenty-three nor more than rty years of age, except in the case of whole-tie serving officers and persons who have satisctorily completed a course of training apprd by the Secretary of State.

The appoinments will be subject to the Probation Rul, 1949, and the Local Government Superanuation Act, 1937, as amended by the West Iding County Council (General Powers) Act, 948, and the salaries will be in accordane with the scale prescribed by the Rules.

The succesul candidates will be required to pass a mecal examination.

Applicatio forms may be obtained from the Principa Probation Officer, West Riding Court Hous Wakefield.

Applicatie, together with two recent testimonials, shd be enclosed in a sealed envelope marked " Aointment of Probation Officer," and must ach the undersigned not later than Noverer 30, 1950.

BERNARD KENYON,
Clerk to the Combined Area Probation Committee.

Office of t Clerk of the Peace,
County all,
Wak d.
Novembe 950.

COUNTY BOROUGH OF GLOUCESTER

APPLICATIONS, to be submitted to the undersigned not later than November 15, 1950, accompanied by the names of two referees, are invited for the post of Assistant Solicitor at a salary within Grade VI (A.P.T. Division) (£595—£660) according to ability and experience.

L. O. NEED,
Town Clerk.

Guildhall,
Gloucester.

EXMOUTH URBAN DISTRICT COUNCIL

Committee Clerk

APPLICATIONS are invited for the permanent appointment of Committee Clerk in the office of the Clerk and Solicitor of the Council at a salary in accordance with Grade IV of the A.P.T. Division of the National Scales (£480 to £525 by annual increments of £15).

If required, housing accommodation can be made available.

Further particulars and conditions of the appointment may be obtained from the undersigned, to whom applications must be delivered by November 30, 1950.

R. S. RAINFORD,
Clerk and Solicitor.

Council Offices,
Exmouth.
November 1, 1950.

METROPOLITAN BOROUGH OF LEWISHAM

Appointment of Assistant Solicitor

APPLICATIONS for this appointment are invited from solicitors with a sound knowledge of conveyancing, police court and county court procedure. Experience of compulsory acquisition of land and of local government is not essential, but will be of advantage. The salary will be in accordance with A.P.T. Division Grade IX (£750×£50—£900 per annum, plus London "weighting" varying between £10 and £30 according to age), the commencing point in the grade being fixed in accordance with experience of the candidate appointed.

The appointment will be subject to the rules and regulations of the Council from time to time in force relating to officers; to the provision of the Local Government Superannuation Act, 1937; to termination by one month's notice on either side; to the successful candidate passing satisfactorily a medical examination by the Council's Medical Officer of Health and to the National Scheme of Conditions of Service. The person appointed will be required to devote his whole time to the duties of the office and will not be permitted to engage in private practice.

Forms of application may be obtained from the undersigned, to whom they should be returned accompanied by copies of three recent testimonials, in an envelope endorsed "Appointment of Assistant Solicitor" so as to be received not later than Thursday, November 23, 1950.

Canvassing, either directly or indirectly, will be a disqualification.

ALAN MILNER SMITH,
Town Clerk.

Lewisham Town Hall,
Catford, S.E.6.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1837.]

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LONDON : SATURDAY, NOVEMBER 11, 1950

Offices : LITTLE LONDON, CHICHESTER, SUSSEX.

[Registered at the General Post Office as a Newspaper]

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NOTES of the WEEK

Research into Juvenile Delinquency

The search for the basic causes of juvenile delinquency continues to occupy the time and energies of a great many people, and we hear constantly of the activities of various individuals and organizations. In Nottinghamshire there is a central county committee for the prevention of juvenile delinquency on which serve the chairman and vice-chairman of the county council, of the children's committee, of the county health committee and of the county welfare committee, together with representatives of the probation committee, the standing joint committee, the churches, the national council of women, the national society for the prevention of cruelty to children and of five other associations or bodies, and with seven county officers and the representatives of six area sub-committees. This makes in all some forty members, although in a few cases one person holds different offices and so represents more than one body. We have received a report on a meeting of that committee held on October 5, 1950. The inquiry with which the committee is concerned was started early in 1949, and it is reported that for 1949 there was a gratifyng decrease in the figures of boy delinquents of as much as 33§ *per cent.*, which occurred equally in each age group and which exceeds considerably the reduction over England and Wales as a whole. There was no change in the figures for the girls which, however, were already lower than those for the rest of the country.

Statistics have been produced which relate offences to the area of residence of the offenders, which show to what extent they operate in groups or gangs and give the approximate times of commission of offences. Then there are detailed figures compiled by the principal probation officer from probation reports, analysing various aspects of the matter including the mentality of probationers, the relationship existing between them and their parents and between the parents themselves, the housing conditions in which they live and their spare time activities and facilities. Another table gives full details from the school report point of view, and yet another shows child population and percentages of delinquency by areas.

There is also a report of a research sub-committee held at Nottingham University on June 7, 1950, at which a general discussion took place on the 1949 figures. It was noted that there were great similarities between the 1949 and the 1948 figures which were considered to be significant. Various suggestions were put forward and certain lines of action were decided upon ; and it was emphasized that a careful individual case study of delinquents ought to be made and that the research committee could do only the preliminary work for such a survey. The central committee was to be asked to pass on to the Home Office a very strong recommendation that an appropriate research worker should be appointed to do such a detailed case survey under the auspices of the university.

We do not wish in any way to belittle the efforts of the enthusiastic workers who are seeking so wholeheartedly a solution to this difficult problem, but there are of course certain well established and well recognized factors tending to cause juvenile delinquency. We need mention only housing difficulties, broken families, both parents out at work, and the still remaining effects of war-time evacuation and breaking of family ties. We do wonder how far a problem which is concerned essentially with human beings and their very varying and individual reactions to the happenings of this highly complex modern society lends itself to solution by research and analysis on the lines proposed. Certain conclusions will doubtless emerge, but it remains to be seen whether their value will bear any real relation to the effort and the expense involved. But we remain willing to be convinced.

Competence and Compellability

An article by Mr. P. B. Carter in the current number of the *Law Quarterly Review*, subjects s. 7 of the Law Reform (Miscellaneous Provisions) Act, 1949, to a close and critical examination. As to subs. (1), there is no dispute about the fact that its object was to abolish the rule laid down in the *Russell* case, but it is pointed out that the language is very wide, and the author asks in a footnote whether, for example, "notwithstanding any rule of law," can mean that evidence is admissible notwithstanding contravention of, *e.g.*, hearsay rule? For our part, we should venture the opinion that it does not.

However, it is subs. (2) that is the main consideration of the article. Mr. Carter submits that one effect of the subsection is that the decision of the Court of Appeal in *Tilley* v. *Tilley* [1948] 2 All E.R. 113, no longer stands, and that competency in such cases no longer involves compellability. He traces the history of the legislation on the subject and examines some of the judicial observations in various cases.

Mr. Carter is vigorously opposed to any but absolutely necessary restrictions on the competence and compellability of witnesses. He regards s. 7 (2) as a retrograde step, as tending to exclusion of the truth. The reasons for the enactment of the subsections are not, it appears, to be found clearly stated in

the Parliamentary debates. "The only plausible defence of the provisions of the subsection would appear to be that the intimate details of the marriage bed should not be aired in public. But is this really almost as much an argument against competence as it is against compellability. Its inadequacy as a justification for the deliberate exclusion of the truth has been demonstrated by critics of the rule in *Russell* v. *Russell* too many times to bear repetition." Again: "the witness is enabled to lie in circumstances where the danger of detection is slight, but cannot be forced to tell the truth, in cases where lying would be hazardous." He points out, moreover, that all rules of privilege constitute impediments standing in the way of the courts having maximum facilities for access to the truth.

Mr. Carter advocates the repeal of s. 7 (2) of the Act of 1949, and of s. 198 of the Supreme Court of Judicature (Consolidation) Act, 1925, which latter section he also examines and criticizes.

Appeals Against Orders

Would-be appellants sometimes have to be reminded that while there is a general right of appeal against the convictions and sentences of courts of summary jurisdiction, there is no such general right in the case of orders, though there are many particular instances of appeals authorized by statute.

In *R.* v. *London Quarter Sessions Justices, Ex parte Bowes*, *see* p. 650, *post*, the Lord Chief Justice, in delivering the judgment of the Divisional Court granting an order of *certiorari*, said it was a commonplace that no appeal lay against the order of any court unless given by a statute.

In this instance the right of appeal was claimed under s. 50 of the Metropolitan Police Courts Act, 1839, which authorizes an appeal to quarter sessions where, under a conviction or order of a metropolitan magistrate, the sum or penalty adjudged to be paid is more than £3. A metropolitan magistrate had made orders condemning certain parcels of goods as forfeited under s. 177 of the Customs Consolidation Act, 1876, as applied by Part III of sch. 5 to the Exchange Control Act, 1947. The magistrate, after hearing a charge in respect of the goods and convicting the defendant, heard claims by several persons to the goods, and condemned the goods to be forfeited, at the same time ordering the payment of £5 5*s*. costs to the Commissioners of Customs. All the claimants appealed against the order of condemnation and forfeiture. Quarter sessions held they had jurisdiction to hear the appeal, and as they had quashed the conviction of the court below they held that the orders of condemnation fell with it. It was contended before the Divisional Court that the order for payment of £5 5*s*. costs gave a right of appeal under s. 50 of the Act of 1839. The Divisional Court found it impossible to hold that the words "sum or penalty adjudged to be paid" in s. 50 were intended to apply to costs. The fact was there was no appeal against the order of condemnation, and the fact that the costs were awarded did not confer one. *Certiorari* was accordingly granted.

The right of appeal claimed was under an Act relating to the metropolis only, but principles of general application were involved, and therefore the decision is of general importance.

The Choice of a Court

The Lord Chief Justice further observed that the court considered it a matter of regret that the question of condemnation and forfeiture in such circumstances, where the amount involved was large, was not brought by the Commissioners before the High Court instead of before a magistrate. Had information been filed in the High Court, the matter could have been taken to the Court of Appeal and, by leave, to the House of Lords. The court felt that citizens of other countries whose property was involved would feel a sense of surprise and grievance that they had no means for insisting that the case should be dealt with by a judge of the High Court. The court thought it desirable that where goods were claimed by persons against whom no proceedings were taken for an offence against the Customs, and more especially when those persons were foreigners, proceedings should be taken for condemnation in the High Court unless, indeed, the value of the goods was so low that proceedings in the High Court would not ordinarily be considered appropriate.

The case illustrates the general principle that even where magistrates have jurisdiction it is not always desirable that they should be invited to exercise it. Judges have often said that magistrates should not exercise their power to deal summarily with indictable offences with too great freedom. It follows that where prosecutors are entitled to make representations they should not invite magistrates to try a case summarily without careful consideration. In the present case, the matter was not criminal and the Commissioners of Customs were able to choose the tribunal, the claimants to the property having no voice in the matter. Having regard to the judgment of the Divisional Court, it may be suggested that if magistrates should be invited to hear a case to which, in their opinion, the observations of the Divisional Court apply, they would at least be justified in asking whether the matter would not more properly be brought before the High Court.

An Unfortunate Deficiency

Private wealth productive of public benefit is exemplified in the report of the Sutton Dwellings Trust for the year 1949. Good management by the trustees, supported by an efficient executive staff, has multiplied three-fold the benefits attainable within the funds initially at the disposal of the trust founded under the will of the late Mr. William Richard Sutton. The trust which came into being at his death in 1900 originally had assets worth approximately £1,500,000 and these had grown to about £5 million by December 31, 1949, largely consisting of 7,836 flats and houses providing accommodation for population numbering 30,035.

Block dwellings, cottages and combined estates have been created by the trustees in various places, some as far apart as London, Plymouth and Newcastle-upon-Tyne, and are let at net weekly rents, exclusive of general and water rates, mostly within a range from 2*s*. 4*d*. for a one-room flat to 13*s*. 6*d*. for a five room house. These rents have always been fixed at the most moderate level practicable having regard to the terms of the charitable trust, which has contributed to the peculiarly disadvantageous position of the trustees in relation to the substantial post-war increase in the cost of repairs. In the main, the Rent, &c., Restrictions Act, 1939, precludes any increase of net rents of properties controlled under it, and the forty *per cent.* increase permitted under earlier Acts has, perforce, been based on rents fixed by the trustees below open market figures. Circumstances attendant upon emergency legislation in 1939 were certainly not conducive to foresight of provision suited to 1950, and an arbitrary "freeze" over the whole field was the only practical course. A review now seems overdue, however, as much in the interests of tenants of properties needing repair and renewals as of landlords unable to meet necessary expenditure.

A comparison of the trust's dwellings revenue accounts for the calendar years 1939 and 1949 demonstrates the effect of changes in expenditure and income levels during the intervening years. Income increased by £6,601, from £169,101 in 1939 to £175,702 in 1949, while expenditure rose on a vastly higher scale, by £91,183, from £89,235 to £180,418. Thus, in 1949 there was a

deficiency of £4,716, compared with a surplus of £79,866 in 1939, a net change of £84,582. Past surpluses have never amounted to as much as two *per cent.* on the capital laid out, and have been the principal means by which the 7,836 dwellings provided have nearly trebled the number possible within the original bequest. The trustees of the Sutton Dwellings were right in their conception of duty to call attention to the deterioration of the trust's financial position, and justified in their comment that the trust is thus handicapped in extending its work. Arbitrary law may be inevitable at certain times but its timeless application is seldom justifiable. This appears to be a case, doubtless typical of a number of others, in which modifications are required to take account of altered conditions and sustain activities productive of considerable public benefit.

FINES AS DEBTS PROVABLE IN BANKRUPTCY

The methods of enforcing the payment of fines imposed by courts of summary jurisdiction are not difficult to ascertain, although the original provisions in the Summary Jurisdiction Acts, 1848 and 1879, have been considerably modified by later statutes, particularly by the Money Payments (Justices Procedure) Act, 1935. In spite of the provisions of this last named statute and of the case of *R.* v. *Woking JJ., Ex parte Johnstone* [1942] 2 All E.R. 179; 106 J.P. 232, it is generally accepted that a fine for an offence is something more serious than a mere debt, and that there is always the ultimate sanction of imprisonment to enforce payment of a fine or to punish for the offence if the fine be not paid. We may say in passing that in mentioning *R.* v. *Woking JJ., supra*, we are not overlooking the subsequent case of *R.* v. *Dunne, Ex parte Sinnatt* [1943] 2 All E.R. 222; 107 J.P. 161.

We should like, however, to direct attention to and to consider the effect of the decision in *Re Pascoe, Trustee in Bankruptcy* v. *The Lords Commissioners of His Majesty's Treasury* [1944] 1 All E.R. 593. In this case it was decided that a sum of £2,100, made up of seven fines of £300 each, imposed at the Newcastle-upon-Tyne assizes on a defendant for seven offences of bribery, was a debt provable in bankruptcy. The case was decided in the Chancery Division before Morton and Cohen, JJ., as they then were.

Morton, J., spoke of these fines as being debts of record due to the Crown, and in referring to other methods of securing payment of them he said: "The Queen's Remembrancer Act, 1859, provided a particular procedure for enforcing payment of a fine, but, in my view, there is nothing in that Act to take away any common law right of the Crown which existed before it was passed." The attention of the Court was drawn to the Defence (Recovery of Fines) Regulations, 1942. These deal specifically with fines for offences against certain defence regulations when the amount of the fine for any one offence or the aggregate of the fines for two or more such offences imposed at the same time exceeds £500. A person so dealt with is said to have been "sentenced to a large fine." By reg. 1 a person so sentenced is deemed for the purposes of the Bankruptcy Act, 1914, to have committed an act of bankruptcy and to be a debtor within the meaning of that Act if he fails to comply with certain requirements set out in the regulation. The details are immaterial for our purpose.

Regulation 3 provides that where a person is sentenced to a large fine by a court of summary jurisdiction (there are corresponding provisions in the case of a conviction on indictment) the court must not issue a commitment warrant to enforce payment of the fine unless the court is told by the prosecutor, at the time of the conviction, that it is not intended to take bankruptcy proceedings or the court subsequently receives notice, from or on behalf of the Attorney-General, that it is not so intended. Moreover if notice of intention to proceed under the Bankruptcy Act is received the court must not thereafter issue any distress warrant to levy the sums in question (reg. 4).

It appears probable that the intention of these regulations was not to soften the harshness of the law for offenders so fined, but to provide an additional means of ensuring that such offenders, who had the means to pay their fines and preferred not to do so, should be compelled to pay in so far as their means allowed and should not be allowed to serve a term of imprisonment in default and then enjoy the fruits of their offences.

It is most important to note that reg. 7, which is headed "saving for existing remedies," says: "Notwithstanding anything in ss. 7 or 9 of the Bankruptcy Act, 1914, where an individual has been sentenced to a large fine neither the presentation of a bankruptcy petition nor the making of a receiving order against him, whether before or after the date of the sentence, shall, save as expressly provided by the foregoing provisions of these regulations,

"(*a*) (deals with cases dealt with on indictment);

"(*b*) in a case where the sentence was passed by a court of summary jurisdiction, affect or entitle any court to interfere with;

"(i) any power of a court of summary jurisdiction or a justice of the peace to issue under the Summary Jurisdiction Acts a warrant of distress or a warrant of commitment in default of sufficient distress or a warrant of commitment instead of a warrant of distress, or to issue a warrant or summons under s. 11 of the Money Payments (Justices Procedure) Act, 1935, or

(ii) any power or duty of any person to execute any such warrant, whether it was issued before or after the date of the presentation of the petition or the date of the order;"

* * * * *

We come now to the Bankruptcy Act, 1914, s. 7, which is as follows:—

(1) On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the court and on such terms as the court may impose;

* * * * *

Section 9 deals with the power of the Bankruptcy Court to stay pending proceedings.

By s. 30 (3) of the Bankruptcy Act, 1914, with exceptions not relevant here, all debts and liabilities to which a debtor is subject at the date of a receiving order or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy. It was held in *Re Pascoe, supra*, that the fines in that case were such debts and Cohen, J., said: "It seems to me that a fine imposed by a court of criminal jurisdiction does fall within the meaning of the words 'any

obligation incurred ".". We quote this particular passage because of the use of the phrase " court of criminal jurisdiction " which appears clearly to include a magistrates' court.

The question we wish to consider is whether s. 7 of the Bankruptcy Act, 1914, means that when a receiving order has been made no process can thereafter be issued by a court of summary jurisdiction to enforce payment of a fine imposed on the debtor.

We do not think that on this point a great deal of help can be obtained from *Re Pascoe, supra*. It would have helped in following some parts of the judgment of Morton, J., to have been able to read the arguments of counsel on both sides. The facts were that John Pascoe was adjudicated bankrupt in August, 1920, and was never discharged from that bankruptcy up to the material time. In June, 1942, he was fined, as we have said, £2,100 for seven offences of bribery and was also sentenced to seven years' penal servitude for other offences. In November, 1942, the Northumberland County Council presented a bankruptcy petition and on this a receiving order was made in December, 1942, and he was adjudicated bankrupt on December 18. On December 31, the fines of £2,100 were sought to be proved as a debt in this bankruptcy and after at first admitting the proof to rank for dividend the trustee proposed to proceed to have the proof expunged as being improperly admitted. These were the facts leading up to the case in question, and the arguments seem, so far as one can deduce from the judgments, to have been directed to the effect of s. 30 of the 1914 Act and the decision was that these fines were a debt within s. 30 (3). The reference to the Recovery of Fines Regulations seems to have been made with a view to suggesting that had the fines been a debt within s. 30 (3) the regulations would not have been framed as they were. On this point, Morton, J., said : " I think it may well be that certain provisions in the regulations in question were merely inserted *ex abundantia cautelae*, because those responsible thought there was a chance that X might be construed as meaning Y." He was referring to possible constructions of provisions of the Bankruptcy Act, 1914.

What we think must be considered is the effect of reg. 7 of the 1942 regulations, which we have quoted earlier in this article. Is it to be argued that but for reg. 7 a fine dealt with under those regulations by the taking of bankruptcy proceedings would thereafter have been unenforceable by ordinary summary jurisdiction process because of the provisions of s. 7 of the 1914 Act? And if it is so argued does it follow that since, on the authority of *Re Pascoe, supra*, every fine is a debt provable in bankruptcy? The lack of any general provision corresponding to reg. 7 means that s. 7 of the 1914 Act has full effect and prevents, in the circumstances set out in that section, the issue of process by a summary court to enforce payment of its fines.

The matter is an important one because either a creditor who comes within the provisions of s. 4 of the 1914 Act or the debtor himself may present a petition on which a receiving order may be made. Therefore, a defendant who is unable to pay his fine may seek the protection of the procedure under the Bankruptcy Act to avoid imprisonment for non-payment, unless the Bankruptcy Court gives leave for summary process to issue.

In the case of *Re Pascoe, supra, ex parte Graves* (1868) 32 J.P. 790, was referred to. It was a case in which a man who had been imprisoned for non-payment of a fine executed thereafter a deed of composition with his creditors and then applied for his discharge from prison. It was held in that case that the process under which the debtor was arrested was of a criminal nature and not for a debt and that he was not entitled to his discharge. The discharge was asked for under s. 112 of the Bankruptcy Act, 1849. This section contained a proviso that the court should not order release where the debtor was in prison " by reason of any prosecution against him whereby he had been convicted of any offence". This case does not help us because there is no corresponding exception in the Bankruptcy Act, 1914, and everything seems therefore to turn on whether a fine is a debt provable in bankruptcy. It is to be noted, however, that s. 28 of the 1914 Act (which deals with the effect of an order of discharge granted to a bankrupt under s. 27) enacts, *inter alia*, that an order of discharge shall not release the bankrupt from " any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue." An implication from this, if we accept that fines are debts provable in bankruptcy, is that an order of discharge does release the bankrupt from the obligation to pay any outstanding balance of any fine other than those relating to revenue offences (*see* s. 28 (2)). Section 33 of the 1914 Act, as amended by subsequent Acts, deals with priority of debts, giving to certain debts (rates, taxes, wages of employees, etc.), preferential treatment. Fines are not mentioned in this list, although a fine payable to a local authority in, in effect, relief of rates might have been expected to rank equally with a debt incurred by non-payment of a rate. Another provision to be noted is that contained in s. 151 by which, unless the Act otherwise provides, the provisions of the Act about remedies against the property of a debtor, the priority of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown. Note the omission from this of remedies against the *person* of the debtor.

This we think is probably the answer to our problem. We do not pretend that the matter is clear beyond all doubt, but we think it is obviously desirable to find if possible an answer which does not involve accepting that a criminal court is to be deprived of discretion to carry into effect its sentence for a criminal offence because the offender chooses to go bankrupt or because he has become bankrupt. We think it can rightly be argued that although the penalties imposed by summary courts are payable, until s. 27 of the Justices of the Peace Act, 1949, comes into force, to various authorities every fine of such a court is in essence a debt due to the Crown, and that s. 7 of the 1914 Act is modified by s. 151 so that although when an offender becomes bankrupt the fine becomes a debt provable in bankruptcy and cannot be recovered in full to the detriment of other creditors yet the person of the debtor is not protected by s. 7 and, subject to the normal summary jurisdiction provisions as to the enforcement of fines, a commitment warrant can be issued in default of payment of the fine. We think there must be one qualification to this. By s. 151 the Crown is bound by the provisions of the Act as to the effect of a discharge from bankruptcy. By s. 28 (2) " An order of discharge shall release the bankrupt from all other debts provable in bankruptcy." We have dealt earlier in this article with s. 28 (1) by which revenue fines are excluded from the effect of s. 28 (2), and we think that, with the exception of such fines, if an order of discharge is made so that the offender is thereby released from all debts he cannot thereafter be committed to prison for the non-payment of any outstanding balance of a fine.

We think that in conclusion we should refer to our reply to P.P. No. 2 at 112 J.P.N. 299. When we gave that answer our attention was directed not to *Re Pascoe, supra*, but to another case *Re Pascoe* [1944] 1 All E.R. 281. We dealt with the question on the basis of this last-named case which dealt not with the enforcement of fines but of costs under the Costs in Criminal Cases Act, 1908. Had our attention been directed to this case we have first cited our answer would have been on the lines indicated in this article.

MODERN WAGE LEGISLATION

[CONTRIBUTED]

Justices must occasionally wonder whether if social and political conditions had encouraged their forerunners in office to persist along the lines of the "Speenhamland Statute," the regulation of wages might perhaps have continued to be one of their functions. But "Speenhamland" was not in keeping with the public spirited control of wages (and of prices) of days that had even then gone before. By it, wages were fixed not so much to reward work done or to furnish a living as to correlate scales of out-door relief, which, in the difficult days after the Napoleonic wars, was paid in supplementation of "competitive" wages so that workers might get enough to live on. The objects of modern wage regulation are far removed from this. Generally they may be said to be the payment of "fair" wages, but what is understood by that differs according to point of view. According to point of view and personal aspiration, a fair wage might be one that is enough to live on, or a just reward for work done, or a share of the national income.

The modern wage authorities include the Industrial Court (Industrial Courts Act, 1919), the (temporary) National Arbitration Tribunal, Wages Councils, the Catering Wages Commission, Boards for Road Haulage and Agricultural Workers, and, to a degree, the Whitley Councils and some other joint bodies. The weekly wage packet for an increasingly large number of workers (and for many others also who are paid by reference to the month, etc.) depends less and less upon a personal contract of employment between individual employer and worker, though contract there must be in law. The tendency has become for the wage packet to depend less upon the amount, etc., of the work done by the individual worker, and more upon the work done by the "average" worker. So far has this developed that very many workers are engaged upon the rates and conditions prescribed for the job by a joint negotiating body, and the findings of that body become applied almost automatically. Possibly in the case of a reduction, workers might ask for a week's notice (in the case of weekly workers) before the reduction applied to them, but generally the practice is that increases, at any rate, are applied from whatever date they come into force according to the decision of the negotiating body.

The setting up of various wage regulating or deciding bodies, increasing during the last twenty-five years, is one of the fruits of trade unionism. And, probably because of their success in the matter, the unions' responsibilities have developed. No strike or lock-out of any size should arise in these days because of the lack of negotiating machinery. If, for any trade or industry, such machinery is not set up or is not adequate, workers or employers can move towards the setting up of a wages council under the Wages Councils Act, 1945. This Act lays emphasis that voluntary machinery shall be used or consulted whenever possible, and generally the pressure for wages councils comes where in a particular trade or industry voluntary negotiation is not practicable.

An important constituent of modern wage legislation is the Conditions of Employment and National Arbitration Order, 1940. Part I of this order set up the National Arbitration Tribunal. Part III providing, *inter alia*, for the declaration of disputes, etc., is substantially repeated in sch. 3 of the Wages Councils Act. Part II of the order prohibits lock-outs or strikes unless a dispute has first been declared under the order, and twenty-one days have elapsed during which time the Minister of Labour has not referred it to the tribunal or otherwise (as provided for by the order) for settlement. The National Arbitration Tribunal is appointed by the Minister. It consists of three "appointed" members, one of whom must be chairman, and two other members, one chosen to represent employers and the other to represent workers. These two members are from panels, constituted by the Minister after consultation with the British Employers Confederation and the Trade Union Congress. The necessary quorum consists of one "appointed" member together with one from each of the panels. The tribunal is empowered to regulate its own procedure and proceedings "as it thinks fit." Section 19 of the Wages Councils Act provides that sch. 3 to the Act shall take effect from the repeal of Part III of the order until December 31, 1950, unless Parliament decides to continue it. Having regard to the present continuance of the order, the Act will apparently have little application in this regard unless further legislation precedes the order's repeal.

The third schedule provides for references to the Industrial Court. Provision is made for any organization of employers or trade union to "appeal" where "recognized terms and conditions" are not being paid. These are terms and conditions in a district which have been settled by machinery of negotiation or arbitration to which the parties are organizations of employers and trade unions representative respectively of employers and workers engaged in that industry in that district. As with the order, all employers are required to observe the recognized terms and conditions or others not less favourable. Trade agreements, decisions of joint industrial councils and of conciliation boards (established under the Conciliation Act, 1896), and awards of the tribunal or of the court or other arbitrator, are made equivalent to the recognized terms and conditions. The appeal is not directly to the court. If any question arises concerning the recognized terms and conditions or as to their observance, that question may be reported to the Minister of Labour and National Service at any time within twelve months by any organization of employers or any trade union which in the opinion of the Minister habitually takes part in the settlement of remuneration and conditions in the trade or industry concerned. If the referred question is not otherwise disposed of (through the Minister's conciliation officers under the Conciliation Act, s. 2, or, *e.g.*, by a joint industrial council to which the Minister may refer it), the Minister shall refer the question to the Industrial Court.

By the Industrial Courts Act, 1919, where the members of the Court are unable to agree, the chairman, an "independent" member, decides as umpire. In other respects the proceedings of the Industrial Court are regulated by S.R. & O. 1924, No. 554. Additionally in cases referred under the Wages Council Act, the schedule of the Act specifically requires the Court to have regard to such matters as, *e.g.*, a standing award or agreement or a decision of the joint industrial council, and also to any collective agreements concerning the terms and conditions of similar workers in comparable trades and industries. In so far as the proceedings of the Industrial Court are open to review in a court of law, this provision is important, *e.g.*, in the contemplation of proceedings by way of *mandamus* or *certiorari*, the only possible "appeal" at law from a court the decisions of which "shall be conclusive," and shall be taken as an implied term of the contract as from "the effective date of the award." It is also of broad political importance in the contemplation of wages as a "share" of the national income and of the inter-dependence of one rate on another.

That the code in sch. 3 was based upon Part III of the order is obvious. It presumably embodies what the Government of the

day thought was appropriate to peace-time. It is not so wide in its scope as the order, which is not limited to the non-observance of recognized terms and conditions, but extends " to any trade dispute."

On one question general agreement exists, and that is that voluntary negotiation is preferable to compulsion in wage matters, and joint industrial councils have much increased in numbers and standing in recent years. These councils have no statutory basis or authority and depend upon general law for their validity. They have had the encouragement of the Governments since the end of the first world war, when they were a recommendation of the Whitley Committee. They have proved useful debating forums, with an increasing tendency towards centralization. Their " decisions " are generally adopted almost as a matter of course. The only serious criticism against them is that levelled against nearly all wage fixing machinery, namely, slowness in action. A weakness, and also from some points of view a strength, is that no decision can be reached unless and until both sides agree. The Industrial Court and the National Arbitration Tribunal, on the contrary, are designed to produce decisions, if necessary, by majority.

Workers as a whole seem to prefer to have, in the background at least, a body able to produce a decision. Even so, experience shows that the utmost must be done to reach a decision acceptable to the majority of workers as a whole. Obviously workers in the particular trade or industry may occasionally have to accept, however unwillingly, a decision adverse to their particular claim.

The Wages Councils Act is the successor to the Trade Boards Acts. A wages council can be set up by the Minister of Labour on his own initiative or after a reference by him to a commission of inquiry consisting of persons which he appoints. There must be not more than three chosen as being independent persons (one of them to be chairman and another to be vice-chairman), and two representing workers and employers respectively. This body may make a " wages council recommendation " to the Minister, who then " if he thinks fit " may make a wages council order. By sch. 1 to the Act, a wages council is to consist of not more than three persons chosen by the Minister as " independent " persons, and such number as the Minister thinks fit of persons who in his opinion represent workers and employers. The chairman and vice-chairman are appointed by the Minister from the independent members. The Minister, before appointing representative members, is required to consult any organization appearing to him to represent employers, and, as the case may be, workers, and shall appoint equal numbers.

In contrast to the National Arbitration Tribunal, which settles its own procedure, and by way of development from the constitution and procedure of the Industrial Court, the proceedings of wages councils are regulated in some detail by S.R. & O. 1945, No. 483. Regulation 1 provides that at least one of the independent members must be present together with one third of each of the representative groups to form a quorum, and reg. 2 that each member shall have one vote, provided that the chairman " may, if he think it desirable, and shall, at the request of more than one half of the members present representing employers or of more than one half of the members present representing workers, take a vote of the representative members by sides, and in such a case the vote of the majority of the members on either side present and voting shall be the vote of that side. In such a division the independent members shall not vote, but, in the event of a division resulting in a disagreement between the two sides, the question may be decided by the majority vote of the independent members, or, if only one is present, by the vote of that member." As one of the principal functions of a wages council, in any case in which they think proper, is to submit a wages council proposal for fixing remuneration and holidays to the Minister, which if approved by him leads to a wages regulation order fixing statutory minimum remuneration, the importance of decisions of a wages council can be appreciated.

The Act contains no provision (as does, *e.g.*, the temporary Conditions of Work Order) specifically against strikes and lock-outs until prescribed machinery for settling the dispute has been used. Apart from the order and since the enactment of the Trade Disputes and Trade Unions Act, 1946, a strike is apparently illegal only if no trade dispute exists (*National Sailors' and Firemen's Union of Great Britain and Ireland* v. *Reed* [1926] Ch. 536).

But the Trade Disputes and Trade Unions Act, 1927, passed having regard to the general strike following the miners' stoppage in 1926, and repealed by the 1946 Act, provided that a strike was illegal if it (1) had any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers were engaged, and (2) was a strike designed or calculated to coerce the government either directly or indirectly by inflicting hardship upon the community. In studying this constitutional matter, it is relevant to note that the 1927 Act was passed against a Labour Opposition, and that the 1946 Act was passed in pursuance of a " pledge " given by the Labour Party to its supporters. What would happen if in the future a general strike, or, as much to the point, any strike in a vital industry were called, which whatever the expressed motives of those taking part, did or would necessarily inflict hardship on the community, is far from clear as a matter of law. In the *Sailors' and Firemen's Union* case, Astbury, J., said : " The so-called general strike called by the Trades Union Congress Council is illegal, and persons inciting or taking part in it are not protected by the Trades Disputes Act, 1906 . . . No dispute exists except in the mining industry. The orders of the Trades Union Congress . . . are therefore unlawful, and the defendants are acting illegally in obeying them."

The Wages Councils Act, as well as directly encouraging joint negotiating of wages, either by voluntary or statutory means, seeks to provide a remedy where direct negotiation fails. A wages council is an administrative body, leading to contractual relation in that where the contract provides for less than the statutory minimum remuneration, that is substituted therefor. Moreover, a wages regulation order leads to criminal liability upon an employer who does not observe it. An employer who does not pay the statutory minimum remuneration or who fails to pay holiday remuneration or to allow holidays as required by the order, commits an offence, and is liable on summary conviction to a fine not exceeding £20, and the court may order payment of the difference between what the worker has received and what he ought to have received during the last two years. In civil proceedings the worker may recover, *e.g.*, in the county court, over four years.

The effect of an order under the Catering Wages Act is similar. The effect of road haulage wages orders is also similar apart from one important exception in that the statutory remuneration is not made an implied part of the contract. There are also other differences, perhaps on account of the peculiarities of the work, as there are, probably for the same reason, in regard to agricultural wages.

The " offence " to which the employer is made liable seems rather out of keeping with the modernistic style of the legislation. The individual employer is becoming a rarity, and such an offence bears lightly upon the limited company or the public corporation. Perhaps the legislators considered that the " small " employer was subject more to such tempting " economies " as getting his labour

in the cheapest market at any price. Moreover, very wisely, no attempt was made to put upon the worker the burden of avoiding the commission of an offence by not performing the amount of work commensurate to the statutory remuneration. Such would be politically inexpedient and socially dangerous, but the comparison is interesting, the more so because of the recent opinion announced by the Trades Union Congress that " dismissal " cases should be excluded from the jurisdiction of the National Arbitration Tribunal.

A negotiated contract between individual master and servant is becoming a relative rarity. The first loyalty is to union or federation. The average worker enters into his contract of employment with little mention of the detail of remuneration, both parties impliedly and implicitly agreeing that " trade union conditions "—meaning usually the recognized terms and conditions—shall apply. Some times such conditions are only at the claim stage, and may become the decision of, *e.g.*, a joint industrial council or the National Arbitration Tribunal. Disputes between individual master and individual man are also rare. Disputes between organization and organization have become more familiar and these as much as anything have impelled successive governments to take action in the name of public policy.

The role of the courts of law has also altered. Fewer master and servant cases are brought before them. In other respects also the function of the courts is constrained by political considerations. Under the Wages Councils Act the Minister acts in many things according to his " opinion." The Act goes into much detail. The Minister may, *e.g.*, " if he is of opinion that no adequate machinery exists for the regulation of the remuneration of the workers make a wages regulation order " (s. 1), or refer the question to a commission of inquiry (s. 3). Again, if he is of opinion that objection to the making of an order is " frivolous," he may ignore the objection (s. 5). In other respects the Minister may take action " if he is satisfied," or he shall take such steps " as appear to him expedient."

In the appointment of members to a wages council the Act provides that the Minister " shall consult any organization appearing to him to represent employers, or as the case may be, workers concerned." A similar provision in the Industrial and Development Act, 1947, resulted in the case of *Thornloe & Clarkson, Ltd. and Others* v. *Board of Trade* [1950] 2 All E.R. 245. A declaration was sought that an order made by the Board was *ultra vires* and void, because the Board had not discharged the obligation placed upon them by s. 1 (3) of the Act, to " consult any organization appearing to them . . . to be representative of substantial numbers of persons engaged in the industry as appears to the Board . . . to be appropriate," and also because the Board had not had proper regard to the provisions of subs. (4) which provides that an order shall not be made unless the Board are " satisfied that the establishment of a development council for the industry is desired by a substantial number of persons engaged in the industry." Sellers, J., agreed with the Attorney-General that where duties were entrusted to a Minister it was not for the court to interfere with their exercise, and that, where there was evidence upon which the Minister could reach his conclusion, the court could not interfere. The applicants had attempted to interpret *Robinson and Others* v. *Minister of Town and Country Planning* (1947) 111 J.P. 378, as a case in which the matter depended upon the opinion of the Minister where no objective test was possible. Sellers, J., did not consider determination of that question to be necessary, having previously found that there was evidence in the present case upon which the Minister (the President of the Board) could have come to his decision.

This case adds one more to the number that show the difficulty of " appeal " to the courts against decisions under such legislation, as no Minister would proceed unless there was some evidence (at least) to support his action. A later case, albeit of a different kind, has recently been before the courts.

In *Master Ladies Tailors' Organization* v. *Minister of Labour and National Service* [1950] 2 All E.R. 525, a declaration was sought that a holidays with pay order made by the Minister under the Wages Councils Act was *ultra vires* and void. The order came into operation on August 15, 1949, but the holiday entitlement under it depended upon qualifying service some of which might be before that date, and the basis of the action was that the order was retrospective. Somervell, L.J., held that the order was not retrospective merely because part of the requisites for its action was drawn from some time antecedent to the passing of the order. The question in this case was not as to the evidence upon which the Minister might have made the order, but as to whether he had power to make the order—a matter of statutory interpretation.

With these cases and a number of others following awards of the National Arbitration Tribunal as examples, the High Court is seen to fill an important role in wage negotiation; moreover although individual actions for the recovery of wages are now less likely than hitherto, the courts of law remain the only forum for recovery at law.

Although to some degree wages are now fixed by public bodies, constitutional philosophy is against wages becoming an instrument of state, and therefore much in favour of voluntary agreement. At the same time, the concern of the state in the total and direction of national income is almost inevitable in modern conditions. As a " voluntary " body, the Trades Union Congress is able to ignore to a limited extent sectional and class union interests (accentuated by division of labour on modern industrial lines, with the possibility of disputes in works between " workmen and workmen," *cf.*, the definition of trade dispute in the Conditions of Employment Order) far enough to give some consideration of wages as a share of the national income which can properly be paid out as wages, as well as to improved methods of work which might increase that share, and they are often invited to do so. Even they would have obvious difficulty in going further towards dividing the share according to the worth of the individual worker—the worth having regard to the economic value of his product as well as to his output. At the same time, although a measure of central attention is obviously necessary, the impracticability of legislating everything and making every wage rate a statutory order is also obvious. That is incidentally one of the problems sought to be avoided by the device of the public corporation. The scope for agreement is very wide.

In the light of this the " demand " of unions for the repeal of Part II (lock-outs and strikes) of the Conditions of Employment Order is understandable, but only to a degree. Possibly some of the objection is the continuance into peace time of the war-time order as an item of wages policy. In point of fact, the provision has never been of complete effect, because strikes have occurred in spite of it. But, even if it were repealed, the problem of the legality of strike and lock-out would remain. Naturally neither could be accepted in the name of public policy. And the futility of the general strike became obvious to all, and likewise to many the provisions of the 1927 Act seemed to be so obvious as almost to make the Act superfluous from the community's point of view except as a declaration of the law. In any case, the Act would probably have proved ineffective to deal with circumstances in contemplation of which it was passed. It provided no machinery for the removal of causes.

Possibly the fact that the Conditions of Employment Order covers all strikes is the reason for the pressure for its removal. Although constitutionally the small strike cannot be ignored, being in principle in no different case from the largest, nevertheless in practice perhaps with the smallest, and broadly, *de minimis lex non curat*, and the statutory provision made for the others should not automatically apply to the smallest. The demand heard from some sources for the repeal of the whole of the order is even less understandable, because it would, unless accompanied by an extension of the period of operation of sch. 3 of the Wages Councils Act, take away the opportunity for the removal of deadlock where agreement has become beyond immediate hope.

Whether, with Part II of the order repealed and the other provisions remaining, a lock-out or strike taken without prior reference to the tribunal would be held illegal is a question. Until the relevant matter had been before the tribunal, any lock-out or strike might be considered to be unconstitutional, and even more so might that be the case if one took place at the instigation of a party to which the decision of the tribunal was adverse. In the event of a constitutional crisis because of lock-out or strike, presumably Parliament would be called upon to take coercive action at a most inopportune if not dangerous time. A general strike or lock-out or one in a vital industry can be considered to be in the nature of a revolution seeking to overthrow standing authority, and too much could hardly be done to prevent its happening. Having regard to the almost unforeseeable ways in which a dispute concerning wages and conditions can become a " point of principle," a constitution without some provision for arbitration in cases of serious disagreement would be seriously lacking.

The existing machinery for discovering the share and the division may not be very good. It may require some considerable restraint on occasion from some workers and from some employers, and no doubt it will be improved upon as time goes on. It relies essentially upon the fixing of wages by voluntary agreement between representative parties. No permission of any " court " has to be sought, to take one example, for an industrial wage increase. Agreement is in fact legislatively (as well as otherwise) fostered on every occasion ; *see, e.g.*, s. 46 of the Coal Industry Nationalization Act, 1946, imposing a duty on the National Coal Board to establish machinery for the settlement of terms and conditions of employment, etc. Fundamental political confusion obviously has its place in such an important matter as the function of labour in the constitution, and some views are not restricted to the niceties of the scope of " compulsory " arbitration. But, so far as a State wages policy is discernable, it has been to keep wages out of politics.

" EPHESUS."

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Somervell and Denning, L.JJ. and Vaisey, J.)

HARLOW *v.* MINISTER OF TRANSPORT

October 20, 1950

Town and Country Planning—Highway—Stopping-up—Powers of Minister of Transport—Order alleged to be contrary to local Inclosure Act—Town and Country Planning Act, 1947 (10 *and* 11 *Geo.* 6, *c.* 51), *s.* 49 (1); *s.* 118 (1).

APPEAL by the Minister of Transport from a decision of BIRKETT, J., (114 J.P. 255).

Mr. Harlow applied to the court by motion under s. 11 of the Town and Country Planning Act, 1947, to quash a stopping-up order relating to certain highways known as the Drovers' Way and the Wheelbarrow Green Highway, in Bedfordshire, made by the Minister of Transport under s. 49 (1) of the Act. The grounds of the application were that the order was contrary to the provisions of the Regulation and Inclosure (Totternhoe) Provisional Orders Confirmation Act, 1886, and the award made thereunder.

The Regulation and Inclosure (Totternhoe) Provisional Orders Confirmation Act, 1886, confirmed the orders set forth in the schedule to the Act. The schedule provided for the preservation in its then condition of the ancient road or track known as the Drovers' Way and gave the public a right of walking over the Wheelbarrow Green Highway. A cement company, which had obtained planning permission for obtaining chalk in the vicinity, satisfied the Minister of Transport that it was necessary, to enable development to be carried out in accordance with that permission, to stop up or divert part of the two highways in question. The Minister made an order to that effect under the powers conferred on him by s. 49 of the Town and Country Planning Act, 1947.

On the hearing of Mr. Harlow's application the main argument in behalf of the Minister proceeded on the basis that the order was contrary to the Act of 1886, but that s. 118 (1) of the Act of 1947, authorized the overriding of the earlier Act. BIRKETT, J., decided that the Minister had no power to override the Act of 1886, and quashed the order.

Held : the Act of 1886, did not override the general law relating to highways ; it did no more than give directions to the valuer who was to make his award in accordance with the usual procedure under an Inclosure Act ; and, therefore, the power of the Minister to make a stopping-up order in accordance with s. 49 (1) of the Town and Country Planning Act, 1947, was not affected by the earlier Act.

Appeal allowed. Order restored.

Counsel : *Rowe*, K.C., and *J. P. Ashworth* for the Minister of Transport ; *Harold Williams*, K.C., and *W. B. Harris* for the cement company ; *Simes*, K.C., and *Steer* for the applicant.

Solicitors : *Treasury Solicitor* ; *Braby & Waller*, agents for *M. K. Smith*, Rugby ; *Dixon, Martell & Co.*

(Reported by C. N. Beattie, Esq., Barrister-at-Law.)

BRITISH PORTLAND CEMENT MANUFACTURERS, LTD. *v.* THURROCK U.D.C.

October 20, 1950

Rating—Plant and machinery—Cement producing apparatus—Kilns—Cylinder resting on piers and rotated by electricity—" Combination of plant and machinery . . . in the nature of a . . . structure "—Rating and Valuation Act, 1925 (15 *and* 16 *Geo.* 5, *c.* 90), *s.* 24 (1) (*a*) *—Plant and Machinery (Valuation for Rating) Order*, 1927 (*S.R. & O.*, 1927, *No.* 480), *sch., class* (4).

APPEAL from a judgment of the Divisional Court (114 J.P. 345).

On land occupied by a cement manufacturing company were large apparatus, called rotary kilns, for producing cement. Each kiln consisted of a very large cylinder resting on piers and rotated by electrical power. Processes of cement manufacture were carried out inside the kiln. The company appealed to the rating appeals committee of Essex Quarter Sessions against the assessment of the kilns to rates as being a " combination of plant and machinery in the nature of a structure " within class (4) of the Plant and Machinery (Valuation for Rating) Order, 1927. Quarter sessions found : (i) the apparatus formed part of a plant or combination of plant and machinery within class (4) of the Order of 1927 ; (ii) the apparatus was a " kiln " within the meaning of that phrase as included in class (4) ; (iii) the apparatus was in the nature of a " structure " within class (4) ; (iv) and, accordingly, the apparatus was rateable by virtue of s. 24 (1) (*a*) of the Rating and Valuation Act, 1925.

The company appealed by way of Case Stated to the Divisional Court, who (MORRIS, J., dissenting) upheld the decision of quarter sessions. On appeal to the Court of Appeal,

Held, there was sufficient evidence to support the findings of quarter sessions, with which, therefore, the Court of Appeal would not interfere.

Appeal dismissed with costs.

Counsel : *Rowe*, K.C., and *Squibb* for the company ; *Simes*, K.C., and *C. Scholefield* for the council.

Solicitors : *J. F. W. Unsworth* ; *Bull & Bull*, agents for *Hatten, Asplin, Jewers & Glenny*, Grays, Essex.

(Reported by C. N. Beattie, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Byrne and McNair, JJ.)

R. *v.* MURRAY

October 16, 1950

Criminal Law—Evidence—Confession—Objection to admissibility—Objection overruled in absence of jury—Right of defending counsel to cross-examine and call evidence before jury on circumstances of confession.

Sentence—Corrective training—Report of Prison Commissioners—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 21.

APPEAL against conviction.

The appellant was convicted at Lincoln City Quarter Sessions of office breaking. He had already pleaded Guilty to another count for attempted shopbreaking and was sentenced by the recorder to four years' corrective training on both charges. The case for the prosecution depended entirely on a confession made by the appellant to the police. Objection was taken by defending counsel to its admissibility on the ground that it had been obtained as the result of a promise, and the recorder, after hearing evidence in the absence of the jury, ruled that the confession was admissible. During the trial defending counsel desired again to cross-examine the police officers who had given evidence with regard to the circumstances in which the confession was made, and, after the appellant, who set up the defence of *alibi*, had been cross-examined regarding his confession, to re-examine him on the circumstances in which it had been made, but the recorder declined to allow him to do so and directed the jury that the circumstances of the confession were a matter for him and not for them, and that they must approach the matter on the footing that the confession had been properly obtained. The recorder imposed the sentence of corrective training, although the report of the Prison Commissioners had stated that, in their opinion, the appellant was unsuitable for such a sentence.

Held, (i) that the recorder's ruling in law was wrong, as the question of the weight and value of the confession was for the jury, and it was the right of defending counsel to cross-examine the police again in the presence of the jury on the circumstances in which the confession had been obtained, and to re-examine the appellant on that issue. The conviction of office breaking must, therefore, be quashed.

(ii) that a sentence of corrective training ought not to be passed when the report of the Prison Commissioners states that the prisoner is not suitable for such a sentence.

Counsel: *J. R. T. Hooper* for the appellant; *Jean Henderson* for the Crown.

Solicitors: *Registrar, Court of Criminal Appeal*; *J. H. Smith*, town clerk, Lincoln.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Lord Goddard, C.J., Morris and Parker, JJ.)

October 24, 1950

R. *v.* LONDON COUNTY QUARTER SESSIONS APPEAL COMMITTEE; *Ex parte* BOWES

Quarter Sessions—Mandamus—Case stated—Refusal to state—Question of fact.

MOTION for order of *mandamus*.

Informations were preferred at the Clerkenwell magistrate's court by the prosecutor, one Howe, on behalf of the Commissioners of Customs and Excise, against I. Henniga, Co., Ltd., and their director, George Frederick Prins, charging them with being knowingly concerned in the fraudulent evasion of the laws and restrictions of the Customs relating to the export of certain diamonds, contrary to s. 186 of the Customs Laws Consolidation Act, 1876, as extended by the Exchange Control Act, 1947. The magistrate convicted both the defendant director and the defendant company. Both appealed to the County of London Quarter Sessions, where the appeal committee allowed the appeals and quashed the convictions, holding that the defendant director, and, therefore, the defendant company, had not been guilty of fraud. The prosecutor applied to quarter sessions for a Case Stated, but quarter sessions declined to state a Case because they regarded the question as one of fact. The prosecutor then moved for a writ of *mandamus* to compel quarter sessions to state a Case.

Held, that quarter sessions could be ordered to state a Case only on a point of law, and not on a question of fact; that the only question of law which arose in the present case was whether quarter sessions were entitled to come to the conclusion that fraud on the part of the defendant director had not been proved; and that as, in the opinion of the Divisional Court, quarter sessions were so entitled, the application of a Case Stated must be refused.

Counsel: *Roberts, K.C.*, *Howard, K.C.*, and *W. H. Hughes* for the prosecutor; *R. F. Levy, K.C.*, and *B. M. Goodman* for the defendant company; *Sir Walter Monckton, K.C.*, and *Threlfall* for the defendant director; *Sir G. Russell Vick, K.C.*, and *T. G. Roche* for other parties.

Solicitors: *Solicitors for Customs and Excise*; *William Easton & Sons*; *W. C. Crocker*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Morris and McNair, JJ.)

October 23, 1950

R. *v.* PARKHURST PRISON GOVERNOR; *Ex parte* COX

Habaes Corpus—Detention in prison—Applicant for writ serving remanet of sentence of penal servitude—Forfeiture of licence under Penal Servitude Acts—Allegation that sentence had expired because of abolition of penal servitude—Criminal Justice Act, 1948 (11 *and* 12 *Geo.* 6, *c.* 58), *s.* 1 (1), *sch. VIII, para.* 1 (1).

MOTION for writ of *habeas corpus*.

The applicant, Arthur John Cox, was a prisoner serving a sentence in Parkhurst Prison. On January 5, 1944, he was released on licence from a sentence of four years' penal servitude with a *remanet* of 574 days. The licence was granted under the Penal Servitude Acts and it stated: "His Majesty is graciously pleased now to grant to the above-named His Royal Licence to be at large from the day of his liberation under this order during the remaining portion of the last-mentioned term of penal servitude unless, before the expiration of the said term, he be convicted on indictment of some offence within the United Kingdom, in which case such licence will be immediately forfeited by law, or unless it shall please His Majesty sooner to revoke or alter such licence." There were the usual provisions about reporting and so forth and then it stated: "If his licence is forfeited or revoked in consequence of a conviction of any offence he will be liable to undergo a term of penal servitude equal to the portion of his term of four years which remained unexpired when his licence was granted, namely, the term of 574 days, expiring, unless sooner revoked or forfeited, on 1st August, 1945." On February 26, 1945, the applicant was convicted at Surrey Assizes of burglary, larceny and armed robbery and was sentenced to eight years' penal servitude. His licence thereupon became forfeited, and he had, accordingly, a *remanet* of 574 days to serve. The applicant contended that, as penal servitude had been abolished by the Criminal Justice Act, 1948, s. 1 (1), all licences had come to an end, that he could not be compelled to serve a *remanet* because of the forfeiture of a licence, that the sentence which he was due to serve had expired, and that, therefore, he was wrongly detained in prison. He, accordingly, applied for a writ of *habeas corpus* directed to the governor of Parkhurst Prison, and the governor made a return stating that the applicant was in lawful custody.

By the Criminal Justice Act, 1948, sch. VIII, para. 1 (1): "Any person who immediately before the commencement of this Act was undergoing or liable to undergo a term of penal servitude under a sentence passed by a court in any part of Great Britain, or as a condition of a pardon granted by His Majesty for an offence for which he was sentenced to death by such a court, or in consequence of the forfeiture or revocation of a licence granted in any part of Great Britain under the Penal Servitude Acts, 1853 to 1891, shall, if he is or ought to be in custody in England at the commencement of this Act, be treated thereafter as if he had been sentenced to, or were undergoing or liable to undergo, imprisonment and not penal servitude for that term."

Held, that this provision showed that licences and the consequences of their forfeiture are still in force, but that during the time when a prisoner is serving his *remanet* he is now to be treated as undergoing imprisonment, and, accordingly, the detention of the applicant was lawful.

Counsel: *F. Elwyn Jones* for the respondent. The applicant in person.

Solicitor: *Treasury Solicitor*.

(Reported by T. R. Fitzwalter Butler, Esq. Barrister-at-Law.)

NEW COMMISSIONS

LONDON COUNTY

William Sydney Charles Copeman, M.D., F.R.C.P., M.R.C.S., 26, Fernecroft Avenue, N.W.3.

SOMERSET

Dennis Mervyn Norrís, Tiny Lodge, Lily Lane, Templecombe.

Ronald George James, Viscount St. Vincent, Roundhill Grange, Wincanton.

SOUTHAMPTON COUNTY

Mrs. Evelyn Annie Purkess, Glenleigh, Avenue Road, Brockenhurst, Hants.

MISCELLANEOUS INFORMATION

CENTRAL LAND BOARD REPORT, 1949-50

Information about claims made against the sum of £300 million provided in the Town and Country Planning Act, 1947, s. 58, in respect of depreciation of land values, is given in the Board's report. Including the large intake of 157,000 claims on the latest possible date, *viz.*, June 30, 1949, the total number of claims was 935,000, but preliminary examination indicated that possibly 100,000 of these related to dwelling-houses which, while perhaps having a small amount off development value, were affected by provisions (in England and Wales, s. 63 of the Act of 1947) ruling out small claims. Each of those claimants for a small amount has been informed of the Board's view and asked, if he wished to press his claim, to state the kind of development for which he thought his property had a value which would add more than one-tenth to the restricted value, and, secondly, the value he thought it would have for that purpose. A further category of claims requiring special attention were some covering, say, twenty acres of land but of which only half an acre, adjoining a road, has development value; claimants in this category have generally been offered an opportunity of reducing the area of their claims in order to maintain their validity, but the Board anticipate more cases of this nature will come to light and they cannot guarantee invariably to draw attention to the facility for reduction.

A useful procedure mentioned in the report provides for informal discussion with a district valuer on the probable amount of development charge for a specified project. This procedure has been widely used and enables a prospective developer to estimate his commitments before purchasing land. Also, where an application has been made for a development charge to be assessed formally, negotiation between the applicant and the district valuer is always invited because only by this means can it be certain that the applicant and his advisers have produced all the evidence to support a fair determination of charge. These methods of preliminary informal approach and negotiations prior to a formal determination are regarded by the Board not so much as a process of bargaining, as has been suggested, but rather of investigating merits in the light of all available information, as had always been done in valuations for the purpose of compulsory purchase, estate duty, and the like.

Exceptions to the exemption of local authorities from development charges are listed in the report, and the standard basis of valuation for the purpose of assessing a development charge payable by a local authority is described. Local authorities, with their powers of buying land for development at existing use value, will, the Board state, by the application of the formula agreed with the associations of local authorities, pay no more by way of purchase price and development charge for land ripe for development than they would if the Act of 1947 had not been passed and they were purchasing at current unrestricted value. In some cases they will pay less because the charge will be related to the actual development which they are to carry out, whereas the pre-Act cost might have reflected some more valuable potentiality.

Evidence available to the Board of prices paid for land for development suggests that sales at or near existing use value are more the exception than the rule. To a large extent this is due to the severe restriction on building. Building licences are difficult to get and the developer who has been fortunate enough to obtain one is often willing to pay a much inflated price for a piece of land upon which to build. In other words, a "scarcity value" attaches at present to the possession of a licence. The theory that the development charge would leave the developer unwilling or unable to pay more than existing use value for his land is not at present working out in practice, especially since a would-be house-owner who pays building value to the seller of the land, as well as a development charge to the Central Land Board, is still paying less in the total cost of his house than he would have to pay for an existing house with vacant possession. A decision was made by the Board against possible collection by them, in the form of increased development charges, of the scarcity value attributable to the possession of a licence. Despite such steps as the Board have felt able to take, they believe there is still a large number of transactions in the buying and selling of land at prices much in excess of existing use value.

TOWN PLANNING INSTITUTE SOUTH EASTERN BRANCH DISCUSS CONTROL OF ADVERTISING

The South Eastern branch of the Town Planning Institute held a well attended meeting at Welwyn Garden City on Friday, October 20. Mr. J. R. Adams, County Planning Officer of Kent, was in the chair and he introduced to the meeting Mr. G. T. Mills, chairman of the Outdoor Advertising Industry Advisory Committee, Mr. G. S. Campbell and Mr. A. G. Ellinger, members of O.A.I.A.C., and Mr. C. L. Hallas, a director of Lintas, Ltd.

The first paper was submitted by Mr. Campbell and was entitled the Sign Industry. He said that the industry has found that some planning authorities are apt to consider sign applications purely from their directional value and to consider it reprehensible for a sign to have advertising value. Some applications had even been rejected on the ground that a particular sign was not considered necessary to the business in question. Such matters, Mr. Campbell submitted, clearly did not come within the considerations of amenity or public safety.

On the subject of illumination Mr. Campbell said that to confine outdoor advertising to day-light hours is neither the intention of the regulations nor commercially advisable. Public opinion clearly indicated that, after years of black-out, brighter and lighter towns were desirable and even today our main towns lag far behind continental and American cities in this respect. He suggested that generally speaking, in the absence of prejudice to public safety, it is unreasonable to refuse illumination in one form or another for any permitted day-light advertisement. Any attempt to classify the type of business which may be granted permission for illuminated signs is clearly not within the scope of the regulations.

On the subject of challenge in 1951 Mr. Campbell said that wholesale challenges will produce an unmanageable burden on the already strained appeal machinery, and he hoped that challenges will be issued only where amenity or public safety is affected beyond all reasonable doubt. Mr. Campbell concluded by stressing the great advantages obtained by co-operation between the planning authority's staffs and the industry.

The next paper, submitted by Mr. Ellinger, was on Poster and Solus Board Advertising. Posters he said were practically all of one of three sizes. The sixteen sheet is much the commonest and is 10ft. deep by 6ft. 8ins. wide. The thirty-two sheet is twice as large and the forty-eight sheet three times as large. This standardization of size is a matter of great importance and is sometimes not fully appreciated by planning authorities. Without it there would be a serious decline in the quality of poster design and printing which would be detrimental to amenity.

Continuing Mr. Ellinger said that unfortunately many sites are held only on short leases for temporary periods. This means that merely to maintain the present capacity a considerable number of new sites must be obtained each year. Many planning authorities do not seem to realize this, nor do they realize that in spite of all the applications made since the regulations came into force the total amount of space in the country is declining. The industry estimates that over the country the replacement of lost sites alone will involve something like 6,000 applications a year.

The last paper was submitted by Mr. Hallas and dealt with the value of advertising to commerce and to the public.

INTERNATIONAL UNION OF LOCAL AUTHORITIES BRITISH SECTION

Water and Drainage

At the conference held at Southport recently, Lt.-Colonel Sir Arthur Heneage, D.S.O., D.L., J.P., presented his report on water and drainage, the Catchment Boards and their successors, the River Boards, of which the following is a précis.

Land drainage in its earliest form was found to be necessary by people in low-lying areas, who dug a ditch or two to drain water to the river and if near tidal stretches threw up a bank against the sea. These operations gradually became complicated and disputes arose over repairs and maintenance.

The solution devised in 1531 was to appoint, for a limited time, commissioners of sewers to "tax, assess, charge, distrain and punish." In addition to their judicial powers, they had executive powers to do work and appoint bailiffs and others. Although Courts of Sewers became Drainage Boards in 1930, commissioners still exist in some areas.

Between this period and the Land Drainage Act, of 1930, which set up the Catchment Boards, we find considerable private and public legislation, dealing with land drainage. The Royal Commission on Land Drainage in 1927 reported that there were forty-nine commissioners of sewers; 198 drainage authorities under special Acts; and 114 elective Drainage Boards. In addition, county councils and county boroughs had certain powers. Enclosure awards and special Acts gave certain drainage powers to small areas. The 1930 Land Drainage Act superimposed the Catchment Board on some of these numerous bodies.

Legislation.—The effect of the 1930 Act was to change the courts of sewers in a Catchment Board area to Internal Drainage Board generally with different powers. The Catchment Boards undertake works and maintenance to main rivers and their outfalls. Navigation authorities and other bodies retained their special rights. The Catchment Boards numbered fifty-three in 1948; they did not cover the whole country, but were set up where there was an important drainage problem. (Drainage is defined in the Act as including the supply of water.)

Area and Geography.—Roughly speaking, the area of a Catchment Board is the basin of a river and the boundary is the river's watershed. This area, it will be seen, is geographical and has no relation to local authorities. The boundaries of Catchment Boards control, with certain exceptions, the stretches of river shown as "main river" in a deposited map. These stretches shown as main river may be changed from time to time. Main river varies from the Thames with a length of 2,297 miles to the Dysynni with twenty miles. Lengths of sea wall for which Catchment Boards are responsible vary from nil in the Thames area to 283 miles in Essex River Catchment Boards' area.

Finance.—Catchment Boards are not rating authorities, they precept on the county and county boroughs in their areas. They can also precept on the Internal Drainage Boards. To note the variation in finance, a penny rate in the Trent brings in £116,000. There are, however, eight Boards where a penny rate brings in less than £1,000. Government grants on a percentage basis are available for new work, but there is no equalization grant. The Boards can precept up to a twopenny rate. Above that the consent of the county and county borough representative has to be obtained.

Future.—River Boards are now being set up to cover the whole of England and Wales, with the exception of London, the Thames and Lee, which have, with the exception of London, analogous powers to River Boards. River Boards take over the duties of Catchment Boards, Fishing Boards and Pollution Authorities in their area and retain the powers that these bodies held. Sub-committees of the Central Advisory Water Committee have been set up to report on the Prevention of River Pollution (report published in 1949) and Land Drainage (sub-committee is still sitting). Fresh legislation is, therefore, to be expected.

WATER SUPPLY FROM THE LOCAL AUTHORITY ANGLE

Précis of report presented by Colonel F. Hibbert, C.B.E., M.C., T.D., D.L., M.Eng., M.I.G.E., F.G.S., chief engineer for Liverpool Corporation Waterworks, is as follows:

It is not possible in the scope of these notes to deal with the many individual undertakings with a long history, but reference is made to two outstanding cases, *e.g.*, Drake's enterprize for Plymouth (1590-1591); and Myddleton for London (1609-1613).

An Act of Parliament was obtained in 1584, for which Sir Francis Drake was largely responsible, and the work involved collecting water from the River Meavy in Dartmoor and conveying it to Plymouth through a leat some seventeen miles long.

Sir Hugh Myddleton, with some financial assistance from James I, brought water from the Chadwell Spring at Ware to Clerkenwell, and it is understood that James I owned half the undertaking.

In both cases water was distributed through lead and wooden pipes to points where the water was made available to the general public, but there were some properties with their own private connexions.

It is recorded that in one town, carts were employed for carrying water and tin cans were used for distributing it to the inhabitants, and that in the poorer districts there were constant brawls and contention around the barrels—the intermittent, imperfect and uncertain character of the supply led to much uncleanliness and disease.

Eventually, the high incidence of cholera and typhoid in this country made the authorities realize in the nineteenth century that water supply was the fundamental health service.

The Duke of Buccleuch's Royal Commission of 1844 recommended that water supply should be the responsibility of local authorities.

The 1847 Waterworks Clauses Act—first general legislation laying down a code—this and the 1863 Waterworks Clauses Act formed the general basis and both Acts were usually incorporated in private Acts. From this time onwards more and more local authorities embarked on schemes of water supply, many companies were bought out; at present practically eighty *per cent.* of undertakings in the country are municipally owned or conducted by public Water Boards with municipal representation and the remainder, with few exceptions, are owned by companies. Excepting such early and remarkable enterprizes as that of Drake for Plymouth and Myddleton's New River for London, local sources of supply were at first developed and no doubt in many cases the presence of water determined the sites and growth of communities.

Local authority undertakings are generally administered as part of the functions of the local council, be it rural district, urban district, borough, county borough, county or city, and as a trading undertaking subject to the same rules and standing orders as any other department of the authority, excepting any special provisions in the Private Acts of Parliament authorizing the particular undertaking.

Generally speaking, profits in a water undertaking cannot be absorbed to relieve local rates, so that the water charges are adjusted from time to time to meet the immediate needs, providing for running expenses, capital charges and contribution to reserve fund, the latter usually limited by the private Act. The restriction on charges and profits is logical having regard to the fact that water is an essential commodity to life and industry and that there is no competition, so that it is in effect a monopoly service and without some control might be used as a means of providing finance for other objects.

Management is usually in the hands of a committee (the water committee) with an executive officer as engineer and manager, or in some cases an engineer as well as a manager.

Legal work forms part of the town clerk's functions and the strictly financial matters other than the general management are the duty of the local authority's treasurer.

In some large undertakings the financial matters are dealt with almost entirely by the department employing a qualified accountant in close touch with the local authority's treasurer, particularly on questions of capital. Rating of waterworks is an important matter since, apart from the actual service rendered all plant, mains and works are assessed for general rates.

There is power, and in some cases statutory requirement, for one authority to supply water to another either in bulk or in detail. When supplies are given in detail this power or requirement is usually specifically referred to in the Private Act of the undertaking and charges and other matters are laid down generally in relation to the undertaking's general charges. But, more often than not, bulk supplies to other local authorities or companies are by agreement between the parties and charges and conditions may vary according to circumstances.

The basis of charge for water for domestic purposes varies amongst undertakings, often according to the particular powers in the Private Act, but the Water Act, 1945, provides a basis which will be common to all. The charge is generally based on net annual value of the premises supplied and covers all domestic use. Under present conditions, *i.e.*, where authorities are still operating under private Acts, the basis of charge differs between authorities, some on net annual value and some on gross value. In some cases extra charges are made where there is more than one W.C. and charges are made for baths.

There are at present about 1,000 undertakings in one form or another responsible for water supply in Great Britain and Northern Ireland, and in many cases the authority is so small as to have little or no real opportunity of fulfilling its function.

Local sources of supply have in a great many cases become totally inadequate, and the use of sources further afield can almost invariably be more efficiently developed if they are designed for the needs of several areas. This leads to the suggestion of grouping undertakings within certain limits. Having regard to present day heavy costs of new works and limitations of material and manpower, there seems to be a case for sources of water supply being developed for the general benefit rather than for a particular undertaking. A survey of local authority water undertakings shows a very wide variation in size measured by population. For instance, a recent survey by the Ministry of Health of Lancashire and Cheshire showed that for a total population of 6,214,000 there are ninety-five water undertakings, and of these Manchester and Liverpool supply thirty-six *per cent.* or 2,232,000 an average of over 1,100,000 each. Nine Boards supply an average of 125,000, twenty-six other county and municipal borough undertakings supply an average of 85,800 each and the remaining fifty-eight authorities supply an average of 11,250 each, of which thirteen supply less than 5,000 each.

Demands for water are continually increasing. There is an ever increasing demand *per capita*—people are more water conscious, there is a higher standard of personal hygiene. Rehousing also brings an increasing demand.

Waste of water is an important problem to be dealt with, and all undertakings have some form of organization for detecting and preventing waste, but in spite of this there is a substantial amount of water wasted.

This country has led the world in water supply questions and not least as regards quality, which is borne out by the comparative freedom from water-borne diseases, but even so there is a constant aim to further improve the quality both bacteriologically and chemically. This latter point raises the question whether hard water should be softened and soft water hardened.

Quoting the Goverment White Paper of 1944:

"There is in this country ample water for all needs. The problem is not one of total resources, but of organization and distribution. It is an extremely difficult problem, and its complexity is often not

appreciated. For the housewife to turn the tap is a simple operation; its very simplicity belies the immense amount of organization, labour, expense and ingenuity which lies behind the regular supply of water which she thus obtains."

REHABILITATION OF THE DISABLED

The Brussels Treaty Committee on the Rehabilitation of the Disabled, on which Government officials from the United Kingdom, Belgium, France, Luxembourg and the Netherlands are working together on common problems of labour, public health and war pensions, held its fourth session in London from October 25-27, under the chairmanship of Mr. W. Taylor, C.B., under-secretary at the Ministry of Labour.

At the present session, the committee took stock of how far these principles had been put into operation, particularly as regards methods of rehabilitation in hospitals and the first stage of vocational training. It became clear that several countries will still have to make an important effort if they are to reach the standard agreed upon. It is obvious that this involves a long and often costly process of re-organization and re-adjustment, but the countries are going ahead with it as fast as possible.

The committee is now studying the principles which should govern the rehabilitation and professional re-education of young persons who are either congenitally disabled or were disabled in infancy.

The delegates took the opportunity of visiting the rehabilitation departments of Belmont and St. Helier Hospitals and the industrial rehabilitation unit at Leicester. They greatly appreciated these visits.

The next session of the committee will be in Paris, from April 11-13, 1951.

WEST HAM HOSTEL FOR YOUTHS

A meeting convened by the mayor of West Ham and the managing committee of the West Ham hostel for youths to consider the problem of "Youthful Offenders" was held at Stratford, E., on October 21. Lord Macmillan, the president of the hostel, and Mr. H. G. Holmes and Mr. S. A. Barrett, representing the Home Office, were present.

Lord Macmillan, in commending the work of the hostel, pointed out that it was established seventeen years ago and was one of the pioneer institutions of its kind in the country.

Mr. J. P. Eddy, K.C., stipendiary magistrate for East Ham and West Ham, and the chairman of the hostel, delivered an address on "Making youthful probationers into good citizens." He said that there was a need throughout the country for foster-parents and for persons who could provide suitable lodgings for lads on their discharge from approved hostels.

The Rev. Sir Herbert Dunnico, chairman of the Stratford bench, said the Archbishop of York had no right to criticize the juvenile court system and to say that it had failed. Juvenile court magistrates had as much right to say that the Christian church had failed in its duty, and that many of the problems confronting them were due to this failure. "I believe," said Sir Herbert Dunnico, "that the work done by the juvenile courts and by probation officers in administering the system of probation in this country at the present time, is one of the brightest stars in the public life of our nation to-day."

AN AID TO LOCAL GOVERNMENT IN THE GOLD COAST

Mr. E. Quartey, town clerk of Sekondi-Takoradi (Gold Coast), has arrived in this country to study and receive practical training in public administration here. Through arrangements made by the British Council, he is spending six months in the office of the town clerk of Weston-super-Mare.

REVIEWS

Divorce Case Book. By William Kee and Sherard Cowper-Coles. London: Butterworth & Co. (Publishers) Ltd. Price 30s. net.

So far as we know, this work breaks new ground in the field of divorce, though there are precedents for case books—ranging from the now historic *Smith* to those produced in recent years upon running down and rent restriction. The field of divorce is one which can be very advantageously ploughed in this manner, because so much that the practitioner has to explain to his client is to be found in the practice of the court, established by judicial decision. The statute law is, indeed, comparatively small in bulk but the law as administered, both in the High Court and (so far as they deal with allied matters) in magistrates' courts, is neither short nor simple. The learned authors, with the support of Mr. Tyndale, K.C., as consulting editor, have set out to provide a case book, both for practitioners and for students preparing for final examinations. Comparatively rare topics such as jactitation of marriage and reversal of decrees of judicial separation have been omitted. So in the main has nullity; this, upon the ground that it is sufficiently covered by existing textbooks. Even so, we are not certain but that it would have been helpful, to the practitioner as well as to the student, to have here two or three of the most modern cases, if only for the reason that they are so difficult to reconcile; perhaps this may be considered when a new edition comes to be prepared. It is pretty safe to prophesy that this will not be long, for not only are matrimonial causes now amongst the most prolific sources of litigation, on various levels, but the application of the law is, in the nature of things, undergoing still a process of judicial growth. When a new edition does appear, perhaps the learned authors will give authority for the statement at p. 183, that persistent masturbation (*semble*, by either spouse) may amount to cruelty. This does not seem a necessary inference from *Gardner* v. *Gardner* [1947] 1 All E.R. 630. The fact that points of extreme difficulty, of this type, are brought out, as they are not brought out in ordinary textbooks, shows the value of a case-book of this sort, in dealing with the human problems which may unexpectedly have to be handled by a solicitor when he comes to go into matters with his client. Upon the formal side, the method of arrangement and set up of the book is ingenious, and calculated to be of great assistance in practice, even for the purposes of citation in court. The work falls into three main divisions, namely the grounds for divorce; absolute bars to divorce; and discretionary bars, each of which is sub-divided into appropriate headings. Each case is then set out with a cross-heading in clarendon type; a statement of its effect, and then the judgments. The authors have, wisely, aimed at not abbreviating these; where passages have had to be omitted, the omission is clearly indicated, and the effect is summarized in brackets. Clarity is still further secured by a marginal black line indicating the most important judicial statements, and at the end of each case there is a note on points of interest, with cross references to other cases decided up to the end of last March. Although the work is primarily intended for practice in the Divorce Division, there is a good deal of it which will be useful to solicitors appearing before justices, to justices' clerks, and even to probation officers. The learned authors have, finally, inserted a table of comparison between the existing statute law and the Matrimonial Causes Bill which passed into law on June 28, 1950, and will come into force on January 1, 1951. This will ensure that persons using the book after that date (pending the appearance of a new edition) will be able, without difficulty, to pick up in the Act of 1950 any sectional references to the statute law now in force, which occur in the reports or in the notes. Altogether, it strikes us as a most useful piece of work for everybody concerned professionallly with matrimonial law.

The Transport Act, 1947 as it affects Road Transport. Second Supplement. Not Cumulative. By G. W. Quick Smith. Leigh-on-Sea: The Thames Bank Publishing Company, Ltd. Price 6s. post free.

We reviewed Mr. Quick Smith's book upon the *Transport Act, 1947, as it affects Road Transport* at the time of publication. For some, at any rate, of our own readers matters relating to road haulage are important. The present supplement, which is not cumulative with the earlier supplement published in October, 1949, is designed chiefly to bring into focus with the main work the regulations since made, dealing with compensation for loss of employment, and diminution of emoluments where road transport undertakings are transferred to the British Transport Commission or one of its executives. It may well be that not merely persons in official positions, but solicitors in private practice, will be called upon to advise on these complicated provisions; those who expect to do so and have found the main work useful will wish to obtain the present supplement.

The Hearsay Rule. By R. W. Baker. London: Sir Isaac Pitman & Sons, Ltd. Price 30s. net.

The learned author of this work is a B.C.L. and B.Litt. of Oxford, a member of the Tasmanian bar, and professor of law in the University of Tasmania. His book began life as a thesis for the Oxford degree of bachelor of letters, and aims at showing where the English rules about hearsay evidence are illogical, technical, or unreal. Generally he sets out to show that there is great need for reform, and scope for much improvement. To the lawyer brought up in a common law country it seems obvious, almost a part of the order of nature, that hearsay evidence ought not to be received. If called upon to state his reasons, such a lawyer would nevertheless often be driven back upon practical convenience, which, again, rests largely on the peculiarly English development of cross-examination. English lawyers, when

they find an opportunity to sit through a civil or criminal trial in a country not following the common law, are apt to be astonished by the facility by which hearsay is admitted by the court. Their astonishment is, at first, mixed with horror but has not infrequently, after more experience, passed into at least a grudging recognition that hearsay may be worth something after all. Even in English law the exclusion of hearsay, or other forms of secondary evidence, is not absolute. As English law stands at present such a book as this must be more useful academically, as an introduction to theoretical study, than in practice, for practice clearly can not be altered without very careful examination, by experienced practitioners as well as on the academic side. It seems to us, however, that Professor Baker has managed to collect a great deal of information, including more judicial authority than we should have expected to find. He has a poor opinion of the Evidence Act, 1938, which indeed did not set out to make very striking changes. He has, however, been able to collect, not merely from this country, but also from American case law and the writings of American jurists, a number of parallels showing how the hearsay rule, which exists on both sides of the Atlantic has been worked, and how it has been regarded under American conditions. We can certainly commend the result to readers who are interested in speeding up our legal processes, and in producing justice.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

FOOD AND DRUGS ACT, 1938

In considering recently the institution of proceedings under s. 9 of the Food and Drugs Act, 1938, and the respective positions of the retailer and the wholesalers concerned, I had occasion to turn up again the note of the case referred to (No. 50) at p. 463 of the current volume of your journal. On considering further the facts set out in the case and the provisions of ss. 9 and 83 of the Act, it occurred to me that the conclusion that there is an anomaly in the Act is not so inevitable as might at first sight appear.

A person may be charged under subs. (1) (*a*), subs. (1) (*b*) or subs. (2) of s. 9. Section 9 (1) (*a*), is, generally, applicable to retailers, s. 9 (1) (*b*) to wholesalers and s. 9 (2) to wholesalers where an offence has been committed by a retailer under s. (1) (*a*). In the case mentioned by your correspondent there would seem to have been no reason why proceedings should not have been brought against the wholesalers (the bakers) under s. 9 (2), assuming there was a sale by the bakers to the retailer. If proceedings had been so taken, then clearly the defence in s. 9 (3) would have been available.

However, the prosecution chose to proceed not under s. 9 (2) but under s. 83 (3), being satisfied that the retailer would have had a reasonable defence under s. 83 (1). The offence which the retailer had committed was that of "selling" under s. 9 (1) (*a*). Section 83 (3) provides that the "other person" (the bakers) may be charged with *the offence* with which the retailer could have been charged—*i.e.*, "selling" under s. 9 (1) (*a*); and it appears that the bakers were in fact so charged.

Now the defence available in s. 9 (3) is expressly limited to apply only to wholesalers and others charged under s. 9 (1) (*b*) or s. 9 (2), *not* to those charged (whether directly or vicariously) under s. 9 (1) (*a*). The defence, if any, of a person charged under s. 9 (1) (*a*) must be in s. 83 (1).

One must conclude, therefore, that the magistrates were wrong, in the circumstances, in accepting a defence based on s. 9 (3) and this conclusion is not unreasonable. It is the policy of the Act to impose absolute liability in respect of the offences created except where, in general, a statutory defence is available. The short effect is often that under s. 9, as under s. 3, the retailer or the wholesaler can only escape if the other is convicted.

I must admit that the argument rests on technicalities but if one is to give full and literal interpretation to the words of both s. 9 and s. 83 then, I feel, the conclusion is properly drawn; and I must accept that it perhaps discloses a further "anomaly" in that, on identical facts, one might succeed under s. 83 (3) where one could not under s. 9 (2)!

Yours faithfully,
A. G. BROWN.

Town Hall, South Shields.

[R.L.H. writes: It is apparent that there is much to be said for either side upon this subject, and it would be of interest to learn the views of other contributors. Mr. John Broughton, to whom I was indebted for his original report, upholds the decision of his justices in the following terms: "I entirely agree with the second paragraph of Mr. Brown's letter, but I still feel that the justices were right in accepting counsel's contention that a defence was open to him under s. 9 (3) of the Act. I think it is a little misleading to say that the prosecution chose to proceed under s. 83 instead of under s. 9 (2). The latter sub-section states emphatically that the other person *also* shall be guilty of an offence, clearly envisaging a prosecution against both retailer and the bakers. Section 83 surely is an enabling section purely and simply, relating to all sections of the Food and Drugs Act, and so far as subs. (3) is concerned it merely gives a mandate to the local authority to by-pass the retailer. No offence is created by it and I would be prepared to argue that it is unnecessary to regard it as having any application to s. 9 except for the purpose of allowing the local authority to make its choice.

"Going back to s. 9 (2) this certainly appears to create an offence, but what offence? I think the answer to this is the offence of selling food intended for but unfit for human consumption; in other words the offence originally created by s. 9 (1) (*a*); and when one gets down to essentials that *is* the offence with which the bakers are charged; and I am inclined to agree with your correspondent when he says himself that the argument is highly technical to say the least. I cannot therefore accept the conclusion that the defence, if any, of a person charged under s. 9 (1) (*a*) must be in s. 83 (1).

"One cannot help coming to the conclusion that if the information preferred charged that an offence had been committed under s. 9 (1) (*a*) by the retailer and then went on to allege that such food in respect of which such offence had been committed was sold to the offender by the defendants and that by virtue of the provisions of subs. (2) they also were guilty of an offence, such information would be good and unassailable, in which case there could be no argument against the proposition that the defence under subs. (3) was available. The same position would surely arise if both the retailer and the bakers were jointly summoned and if the local authority chose to proceed against the retailer and also against the bakers under subs. (2), the provisions of s. 83 would have no application unless the retailer availed himself of the machinery under subs. (1) of that section.

"Assuming this argument to be correct I do not think it could possibly be conceded that merely because the local authority have by-passed the retailer this has the effect of stultifying a defence otherwise open to the bakers."—*Ed., J.P. and L.G.R.*]

PERSONALIA

RETIREMENT OF MR. H. B. GREENWOOD

The Westmorland quarter sessions held at Kendal this month, were the 128th Mr. H. B. Greenwood had attended during his thirty-two years as Clerk of the Peace, a period of long service which ends with his retirement this year.

As it was the last quarter sessions he would attend in his official capacity, Mr. Greenwood received the tributes of the magistrates before the usual business began.

The Chairman, Lord Chorley, referring to Mr. Greenwood's remarkable record of service to the county, said: "Not very long ago, after he had passed his century of quarter sessions, the magistrates made him a presentation and I attempted some appreciation of his character and the great work he has done. Now Mr. Greenwood has completed thirty-two years and we all deeply regret his decision to retire. I am sure I am expressing the wishes of all when I say we hope he will continue for very many years with unimpaired health and vigour to carry on his many other activities."

The senior member of the bar present, Mr. W. F. N. Perry, also joined in the tributes on behalf of his Northern Circuit colleagues, who had always been indebted to Mr. Greenwood for his courtliness and friendliness. He had known Mr. Greenwood for over twenty years and counted it a privilege to claim his friendship.

The chief constable of Cumberland and Westmorland, Mr. P. T. B. Browne, added his appreciation for assistance during the twenty-four years he had been in the two counties.

Returning thanks, Mr. Greenwood revealed that it was his 128th quarter sessions and added that he would continue to serve the county as under sheriff.

OBITUARY

Lord Jessel, C.B., C.M.G., died in London on November 1, at the age of eighty-four. In 1900 he was elected a member of the first Westminster City Council. He was mayor of Westminster in 1902 and in 1909 became an alderman. He was a Justice of the Peace and chairman of the bench of the Hanover Square division.

RAINBOW CORNER

Why no change in legal fashions?
Why must wigs be always grey?
Why not let the legal head-gear
Like the ladies' hats be gay?

Why not wigs of beige and orange?
Purple, amber, pink and green?
Wigs with all the spate of colour
Of a sun-lit Ascot scene?

Why not wigs of red and yellow,
Mauve, magenta and maroon?
Silver wigs on a sunny morning
Golden ones in the afternoon?

Why not wigs of brown and claret?
Lilac wigs with crimson curls?
Russet wigs for dear old buffers,
Violet ones for legal girls?

Why not wigs of Scottish tartan,
Or the colours of your school?
Why must dismal, dreary drabness
Always be the rigid rule?

Why not wigs with frills and feathers?
Why not veils and bits of lace?
Why not let us trim our colours
All according to our case?

Why not colour all proceedings?
Why remain so prim and staid?
Why not in a breach-of-promise
Sport a really stunning shade?

Why be just a dull old leader?
Why not lead in fashion too?—
Why not come to Court tomorrow
In a wig of Cambridge blue?

J.P.C.

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

The debate on the Address following the opening of a new Session of Parliament traditionally ranges over a wide field. It is one of the few occasions on which an M.P. who catches the Speaker's eye can raise any issue he wishes without much danger of being ruled out of order.

In the course of this Session's opening debate, Lieut.-Colonel M. Lipton (Brixton) made an appeal for an inquiry into the present unsatisfactory state of the marriage laws.

He recalled that in the last Parliament 200 M.P.s put their names to a motion which sought to ensure that a period of separation of not less than seven years should provide either party with a ground for instituting divorce proceedings. A remarkable feature of that effort was that those 200 names included those of Members of all parties and of every important religious denomination. In this Parliament, since the February election, no fewer than 120 M.P.s had signed a motion asking the Government to consider the appointment of a Royal Commission to investigate the present state of the marriage laws.

When the Prime Minister had been questioned on the matter, he had made it quite clear that in his view such a Royal Commission was not advisable and that the present time was inappropriate for the initiation of such an inquiry. The Lord Chancellor, who had been invited recently to receive a deputation of M.P.s on the matter, had declined to see it on the ground that no useful purpose would be served.

Mr. Lipton went on to say that the Denning Committee, although it was not entitled by its terms of reference to make any suggestions as to alterations in the law, had reported in 1947 that:

"There appears to be a large number of cases where husband and wife have been separated for many years and there is no possibility of their ever coming together again, but a divorce cannot be obtained because the separation was by mutual consent and did not amount in law to desertion. It is suggested for consideration whether separation for seven years or more should not be a ground for divorce if there is no prospect of reconciliation."

The courts of summary jurisdiction, which afforded some indication of the present state of affairs, showed that in 1946 some 25,000 maintenance orders were made by magistrates. In 1947 the number was 20,000, and he thought it was now in the neighbourhood of 16,000 a year. Those were colossal figures and represented a problem which somebody ought to be looking at and considering with a view to finding out what could be done to remedy that most unsatisfactory and deplorable state of affairs.

It would be found from an examination of the criminal statistics that some 3,000 husbands went to prison every year rather than comply with the maintenance orders that had been awarded against them. He quite agreed that some of them were, probably, men who were deserving of no consideration, but he was convinced that amongst them were some who felt so embittered by what they considered to be a gross injustice in their individual cases that they would rather go to prison than comply with the magistrates' court order.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, November 2

TRANSPORT (AMENDMENT) BILL, read 1a.

HOUSE OF COMMONS

Wednesday, November 1

EXPIRING LAWS CONTINUANCE BILL, read 1a.
RESTORATION OF PRE-WAR TRADE PRACTICES BILL, read 1a.
SOLICITORS BILL, read 1a.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Children Act*, 1948, *s.* 26 (1)—*Application by local authority more than twelve months after birth—Is there need for proof of payment by alleged father within the twelve months.*

Under s. 26 (1) of the Children Act, 1948, where no affiliation order is in force a local authority may within three years of a child being taken into its care, apply to a court of summary jurisdiction in the place where the mother resides for a summons to be served on the putative father under s. 3 of Bastardy Laws Amendment Act, 1872. Section 3 of the Bastardy Laws Amendment Act, 1872, provides, *inter alia*, that " . . . upon proof that the man alleged to be the father of such child has, within twelve months next after the birth of such child, paid money for its maintenance " . . . the woman concerned may " make application . . . for a summons to be served upon " the putative father . . . , etc. In the case in point there is no proof that the putative father paid any money within the twelve months next after the birth of the child either to the mother (who is unwilling to provide such proof) or to a local authority. The child has been in the care of a local authority for two years.

In view of the provision of s. 3 of the Bastardy Laws Amendment Act, 1872, quoted above, can an application be made by a local authority (under s. 26 (1) of the Children Act, 1948) for a summons under s. 3 of the Bastardy Laws Amendment Act, 1872, to be served on the putative father? J.T.D.S.

Answer.

Application can be made by the local authority. Section 26 (1) provides a special time limit in the case of an application by a local authority under that section, and does not require, as a condition precedent, that there shall be any proof of payment of money by the alleged father.

2.—Criminal Law—*Wilful damage—Claim to trial by jury—Charge under Criminal Justice Administration Act*, 1914, *s.* 14 (1).

A defendant was recently before the county justices charged with wilfully committing damage to the amount of £13 7*s.* 6*d.* to certain property contrary to s. 14 (1) of the Criminal Justice Administration Act, 1914. The defendant claimed a right to trial by jury but it was ruled by the justices that he had, in fact, no such right and the case was dealt with summarily. It was explained to the defendant that the justices could if they thought fit commit him for trial but should they see fit to deal with the matter themselves then they had full power to do so. Certain doubts have subsequently been expressed as to whether the magistrates were correct in their ruling and I shall be obliged if you will kindly advise me whether a defendant charged under the above section of this Act has a right to trial by jury. JIDU.

Answer.

With the charge laid under the section cited the defendant has no right to claim trial by jury.

The case of *Waroquiers* v. *Marsden* [1950] 1 All E.R. 93, has some bearing on the point if the defendant's claim is based on the fact that he might have been charged, under another section, with an indictable offence.

3.—Food and Drugs Act, 1938—*Registration of premises for sale and manufacture of ice-cream.*

A small village shop has been registered for the sale of ice-cream (stored in a refrigerator or container) although the premises could not be said to comply with the provisions of s. 13 of the Food and Drugs Act, 1938. The owner has now made application for registration of the same premises for the manufacture of ice-cream, but the council's officers do not consider the premises are suitable for that particular purpose.

Will you please advise:

(1) Whether the premises in the first instance ought to have been registered for the sale of ice-cream;

(2) Whether the council ought now to refuse registration for the manufacture of ice-cream on the grounds that the premises do not comply with the provisions of s. 13, and

(3) generally. APEN.

Answer.

(1) No.

(2) Yes.

(3) On your statement of the facts, it looks as if the court ought to cancel the existing registration under s. 14.

4.—Land—*Sale of house by freeholder—Vendor's wife refusing to give up possession.*

A is the wife of B who some fifteen years ago purchased a dwelling-house (subject to a mortgage which remains unredeemed), which until B recently deserted A was the matrimonial home. No contribution towards the purchase price of the dwellinghouse was made by A.

B has for several years past been spending all his available earnings and what savings he had on drink and of late B has been borrowing heavily and immediately dissipating the money so borrowed in the same direction.

For several weeks before deserting A, B had given her nothing for housekeeping nor for her maintenance and since his desertion which was some two or three weeks ago B has continued to neglect his duty to maintain A.

A remains living in the former matrimonial home with a daughter, over twenty-one years of age, who is self-supporting, and A reads an auctioneer's advertisement in a local newspaper to the effect that on the instructions of B the dwellinghouse, formerly the matrimonial home, is for sale with vacant possession by auction, failing a prior sale by private treaty.

B has given up, or is about to give up, his employment and there is ground for believing that B, if he is able to sell the equity of the dwellinghouse, will dissipate the proceeds and disappear.

A has for some time past of necessity had to take a menial job in order to live. A in the circumstances would have no difficulty in obtaining a maintenance order for what it is worth. A has notified the estate agents that she is not prepared to give up the matrimonial home and has so informed the prospective purchasers who come to view. No suggestion has been made by or on behalf of B as to any alternative accommodation for A.

So long as B remains the owner A would run no risk of being ordered to leave the matrimonial home in the circumstances of this case (*Stuart* v. *Stuart* [1947] 2 All E.R. 813).

If B succeeds in finding a purchaser, however, it would seem that the new owner would inevitably obtain an order for possession as against A, if she failed to vacate.

What, if any, steps can be taken by A to prevent B from selling the house, having in mind that B is the sole owner subject to the mortgage and that A could not prove that she found any part of the purchase price? A.C.T.J.

Answer.

However hard it may be in the circumstances, we cannot see that A has any right to remain. The law gives her certain remedies, but continued occupation of a stranger's property, because it was formerly her husband's property, is not one of them.

5.—Magistrates—*Case stated—Application duly made—Doubts as to applicant's intention to continue—Can he be called upon to enter into recognizance?*

An application was made to my justices for an adoption order in respect of a certain infant. The mother of the infant gave consent but the father contested the application. After hearing the evidence of the applicants and all respondents and the report of the guardian ad litem, the justices dispensed with the consent of the father and made an adoption order.

Notice has now been given by the respondent father of the infant for my justices to state a case but there is some doubt as to whether the respondent will prosecute this appeal. In view of these circumstances, within what time can my justices call on the appellant to enter into his recognizance to prosecute this appeal? JOSO.

Answer.

In *Stanhope* v. *Thorsby* (1866) 30 J.P. 342, it was decided that it is sufficient if the recognizance is entered into before this case is stated and delivered.

The justices can inform the appellant that the case will not be stated and delivered until he enters into the recognizance, but as there is a period of three months in which the case may be stated and delivered we do not think that the justices can prevent the appellant from coming forward at any time within that period to enter into his recognizance.

6.—Magistrates—*Summary offence—Summons issued but not served—Subsequent issue of warrant—meaning of " in the first instance."*

Application has been made for a warrant under s. 2 of the Summary Jurisdiction Act, 1848, in respect of a non-indictable offence. A summons has previously been issued and returned as defendant could

not be served. A fresh address has been discovered but it is unreliable. If such warrant is issued it may prove to be in existence as if for an indictable offence. Is this the intention of the Act which specifically states that instead of issuing a summons a warrant may be granted in the first instance; must this be construed as meaning that, as in this case a summons was issued in the first instance, a warrant cannot now be granted or should a wider interpretation be placed upon the words "in the first instance"? J. CINQUE.

Answer.

We are not clear what our correspondent has in mind when he says "if such warrant is issued it may prove to be in existence as if for an indictable offence."

Before a warrant is issued the truth of the information must be sworn to, and if this cannot be done before the justice before whom it was originally laid a fresh information must be laid and sworn to before another justice. We have no doubt that in the circumstances set out in the question a warrant can properly be issued, and that the words "in the first instance" do not restrict the justices as is suggested.

7.—Prevention of Damage by Pests Act, 1949—*Prevention of Damage by Pests (Compensation) Regulations* 1950—*Existing officer.*

The council have received a claim under the Prevention of Damage by Pests (Compensation) Regulations, 1950, from an officer whose appointment with the county council terminated on April 30, 1950, as a result of the transfer to county district councils under the above-mentioned Act of functions hitherto discharged by the council. In order to establish that he was an "existing officer" as defined by the regulations an officer must prove eight years' service without a disqualifying break in employment under the Crown or in the local government service, with certain qualifications relating to war service not material hereto. The officer concerned had only four years' local government service but immediately prior thereto he served in the regular army for twenty-four years. Is such army service "employment under the Crown" so as to make the officer an existing officer for the purpose of the regulations? AMA.

Answer.

We think so.

8.—Public Health Act, 1936—*Supply of dustbins for house refuse.*

This non-county borough has not undertaken to provide and maintain dustbins for the reception of house refuse and to make an annual charge therefor as provided by s. 75 (3) of the Public Health Act, 1936. Dustbins are accordingly provided only after failure to comply with a notice and a charge is made in accordance with s. 75 (2). A request has been made that the council should undertake to sell dustbins to any ratepayer who wishes to purchase one from them, irrespective of the service of notices, the charge to be made therefor to be the cost price plus transport and other charges. You are requested to advise whether the council is empowered to sell dustbins in this manner. It appears to the town clerk that it has no authority so to do. Section 75 gives statutory power to supply dustbins in one of two ways only, and it appears to him that local retailers of this commodity would object to the proposal and further, that any loss incurred by the council in the supply thereof could successfully be challenged at audit. APP.

Answer.

We agree, subject to what is said at 113 J.P.N. 219 and to the Local Authorities (Charges for Dustbins) Order there mentioned.

9.—Superannuation—*Local Government and Other Officers Superannuation Act*, 1922.

A late employee of this corporation who is now eighty years of age maintains that he has been wrongfully deprived of a pension for the past fifteen years. The facts of his case are as follows:

(*a*) He was born on February 15, 1870;

(*b*) He began as a weekly wage employee in November, 1920, when he was fifty years of age;

(*c*) From October 1, 1923, this corporation operated a scheme under the Local Government and Other Officers' Superannuation Act, 1922. The employee was then aged fifty-three, but as he was not then placed in a post which had been designated as an "established post" under the 1922 Superannuation Act, he was not called upon to pay any superannuation contributions;

(*d*) He was not at any subsequent date placed in an "established post" under the 1922 Act, and consequently was never at any time called upon to pay any contributions to the superannuation fund.

(*e*) He ceased to be employed on his sixty-fifth birthday, that is on February 15, 1935.

Having regard to the definition of "officer or servant" in s. 3 of the 1922 Act, and also to the definition of "non-contributing service" in the same section, will you kindly answer the following question, *viz.*:

Had the corporation any power whatsoever to grant a pension to the above person under the 1922 Act, on his ceasing to be employed in 1935? ANNU.

Answer.

On the facts stated, the corporation could not have paid him a pension under the Act of 1922.

10.—Village Greens—*Vesting in—Parish councils.*

Within the district of this council there are several villages containing village greens, the freehold of which is understood to be vested in the parish council under statutory authority. I had believed that the vesting was effected by the Public Health Act, 1936, but cannot find that this is so.

Can you assist me, please? AUR.

Answer.

There is no statute which, universally or generally, deprives the former land owner of his property in a village green and vests it in the parish council. But parish councils have often acquired the freehold or a smaller interest, by agreement under s. 8 (1) (*d*) of the Local Government Act, 1894. There are other possibilities, but search is, we think, likely to show that this has happened in your cases. We have heard of village greens which were taken by the parish council soon after 1894, upon a tenancy at nominal rent, where the break-up of the landlord's estate has caused the nominal payments, and the fact that the council were tenants, to be forgotten. The Public Health Act, 1936, does not touch the matter.

11.—Water supply—*Unauthorized water charges—Recovery.*

My council is the statutory water undertaker under the Public Health Act, 1936, and it has been the practice of the council to charge for turning water off, where new properties are being connected, and also where the owner or occupiers wishes repairs to be carried out on his premises and his stop tap is inadequate. There are no byelaws in force so that s. 35 of the Water Act, 1945, is not applicable. In all cases the council have required the person doing the repairs to sign a statement authorizing the council to charge for the work, but in many cases these orders have been signed by his workmen.

As difficulty is being experienced in recovering these charges, will you kindly let me know if in your opinion:

1. The council can charge for the work under the Public Health Act, 1936, as amended by the Water Act, 1945?
2. The council can recover as work done and services rendered? A.T.E.P.H.

Answer.

We are inclined to think these charges illegal, and therefore irrecoverable, under either of the suggested headings.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

ESSEX PROBATION AREA

Appointment of Female Probation Officers

APPLICATIONS are invited for the appointment of two full-time female probation officers.

Applicants must not be less than 23, nor more than 40 years of age, except in the case of serving probation officers.

The appointments will be subject to the Probation Rules, 1949, and the salary will be according to the scale prescribed by those Rules.

Applicants should be able to drive a car.

The successful applicants will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with copies of not more than three recent testimonials, must reach the undersigned not later than two weeks after the appearance of this advertisement.

W. J. PIPER,
Deputy Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.
November 4, 1950.

SURREY COUNTY COUNCIL

Legal Assistant (Unadmitted)

APPLICATIONS are invited for the appointment of a Legal Assistant (Unadmitted) in the Clerk's Department on Grade IV A.P.T. (£480 × £15—£525) plus London allowance.

The appointment, which is on a temporary basis, is for a period of at least two years. Applicants must possess a sound knowledge and experience of Conveyancing Law and Practice, but previous local government experience is not essential. The appointment will be subject to the provisions of the Local Government Superannuation Act, 1937, and the Staffing Regulations of the Council.

Applications for the appointment stating age, full details of previous employment, experience and qualifications (if any), accompanied by one recent testimonial and the names and addresses of two referees, must reach the undersigned not later than November 30, 1950. Canvassing will disqualify.

DUDLEY AUKLAND,
Clerk of the Council.

County Hall,
Kingston-upon-Thames.

BOROUGH OF ACTON

Assistant Solicitor

APPLICATIONS are invited for this appointment within Grades A.P.T. Va to VIII (ranging from £550 to £760) according to the qualifications and experience of the person appointed. In addition, the appropriate London Weighting of £20 or £30 will be paid.

Previous local government service is desirable but not essential.

A copy of the terms of appointment and of the form of application may be obtained by sending me an addressed foolscap envelope. The last day for delivery of applications is November 25, 1950.

Canvassing will disqualify.

H. C. LOCKYER,
Town Clerk.

Town Hall,
Acton, W.3.

CUMBERLAND COUNTY COUNCIL

Common Law Clerk

APPLICATIONS are invited for the appointment of a Common Law Clerk, at a salary within the Scale £450 × £15—£495.

For particulars, apply to the undersigned.

G. N. C. SWIFT,
Clerk of the County Council.

The Courts,
Carlisle.

BOROUGH OF WATFORD

Appointment of Assistant Solicitor

APPLICATIONS are invited for this appointment at a salary in accordance with Grade A.P.T. IX, commencing at £750 per annum. Applicants must have had three years' qualified local government experience. Forms of application and further particulars can be obtained from the undersigned. The closing date for this appointment is November 21, 1950.

A. NORMAN SCHOFIELD,
Town Clerk.

Town Hall,
Watford.
November 1, 1950.

COUNTY OF KENT

Appointment of Male Senior Probation Officer

THE Kent Combined Probation Committee invites applications from male probation officers for appointment as Senior Probation Officer to serve in the Kent Combined Probation Area. Applicants must have had wide experience as probation officers and be capable of supervising the work of other officers.

The appointment will be subject to the Probation Rules, 1949, and the selected candidate will be required to pass a medical examination.

Applications, stating age, experience and educational qualifications, together with copies of not more than three recent testimonials, should be sent to the undersigned within fourteen days from the appearance of this advertisement.

W. L. PLATTS,
Clerk of the Peace.

County Hall,
Maidstone.
November 3, 1950.

INQUIRIES

When replying to advertisers please mention the Justice of the Peace and Local Government Review.

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